SOUTHERN BIOGRAPHY SERIES

EDWARD LIVINGSTON

SOUTHERN
BIOGRAPHY
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Edited by
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Edw Livingston

Reproduction of the John Trumbull portrait in the New York City Hall.

EDWARD LIVINGSTON

Jeffersonian Republican and Jacksonian Democrat

BY

WILLIAM B. HATCHER

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To Amelia

PREFACE

History has often been capricious in dealing with men who have given immediate direction to current problems and who have exerted an influence upon the course of events during succeeding generations. Merit and enduring service have not always been its standards of measure for often men of mediocre ability have attained lasting prominence while other men of superior talents have been overlooked and forgotten. Among those who have been largely passed over in the chronicling of events, whose vital influence gave direction to the course of history, is Edward Livingston.

Born of patrician parents, Livingston was a product of the period of family politics and dominant party leaders. Although rather cynical of the masses and refusing to appeal to their emotions in the expression of his democratic opinions, this jurist, codifier, statesman, and diplomat experienced a long, rich, and varied political career. It extended from 1791 to 1835 and was closely interwoven with that of the leading statesmen in two important transitional periods in American political history. It was unique in that Livingston exercised a positive influence on the course of events by giving militant expression to Jeffersonian republicanism and direction to Jacksonian democracy.

While a Representative in Congress from New York City, 1795–1801, Livingston distinguished himself in his fight against the Alien and Sedition Acts, gained a national reputation as an authority on constitutional law,

and contributed to the overthrow of the Federalist party and the rise of Jefferson to power. Later, while representing Louisiana in Congress from 1823 to 1831, he increased his reputation as an authority on constitutional law by his speeches in both House and Senate. The climax of his arguments is to be found in the vibrant Anti-Nullification Proclamation which he, as secretary of state, prepared for Andrew Jackson in 1832. This concept of the Union that guided Lincoln in the preparation of his first inaugural address has become so thoroughly an integral part of the body politic that no question as to its verity has been raised since the Civil War.

Not only did Livingston's constitutional theories influence men who translated theory into practice prior to 1865, but his concept of the responsibility of the government to the individual member of society persists to the present. In the original and constructive quality of his thinking, revealed in the Louisiana Penal Code, he anticipated many of the features embodied in present-day social legislation. He also assisted in the preparation of the Civil Code of Louisiana which still remains in force without fundamental change. Although legislative sanction of his many codal efforts was restricted to the Civil Code, his plan of penal jurisprudence reform brought him international recognition. Probably more than any other individual, Livingston was responsible for the continuance of civil law practices in Louisiana. His successful practice before the Federal Supreme Court continued until the time of his death.

Livingston's versatility was further revealed by the facility with which he made social contacts. Equally at ease with persons of high or low estate, he drew his friends from all walks of life and shades of political thought. He ingratiated himself with the inhabitants of New Orleans

and, consequently, was able to render patriotic service during the War of 1812 by combating disloyal groups in the city and holding the Laffites to the American cause. He included among his friends most of the outstanding, influential figures of America and many of the important men of Europe, especially the liberals. The honors bestowed upon him by learned societies and rulers of Europe bespeak the esteem with which he was held abroad.

The writer has received the critical assistance and the advice of interested persons and the kind co-operation of various agencies during the preparation of this study. First and foremost, keen appreciation of the service rendered is expressed to Professor Wendell H. Stephenson of Louisiana State University, one of the editors of the Southern Biography Series, who suggested the task and gave encouragement, advice, and criticism throughout the course of the writer's efforts. Mr. Fred Cole, coeditor of the Series, gave the manuscript and notes critical revision and made constructive suggestions. Acknowledgment is made of the special obligation to Professor William O. Lynch of Indiana University and Professor Walter Prichard of Louisiana State University for their constructive criticism of the chapters dealing with national affairs and Louisiana respectively; to Professor Harriet S. Daggett of Louisiana State University for suggestions as to the treatment of Livingston's codal contributions; to Attorney Ben R. Miller of Baton Rouge, Louisiana, for advice regarding the legal questions pertaining to the Batture controversy; to Professor John D. Barnhart of Louisiana State University and Mr. Charles F. Trudeau, sometime High School Supervisor of Louisiana, for numerous helpful suggestions; and to Mr. Philip Uzée of the History Department of Louisiana State University

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For contributions to research the writer is particularly indebted to Mr. Edward Alexander Parsons of New Orleans for permission to work in the Bibliotheca Parsoniana; to Dr. Philip M. Hamer, Chief of the Division of Reference, The National Archives, for locating and securing permission to use important documents; to Dr. Victor H. Paltsits, Chief of American History Division and Keeper of Manuscripts in the New York Public Library, for courteous co-operation and prompt replies to numerous inquiries; and to Dr. Thomas P. Martin, Assistant Chief, Division of Manuscripts, Library of Congress, and Mr. Stanley Arthur, Director of the Survey of Federal Archives in Louisiana, for valuable assistance rendered. In addition, appreciation is expressed to the Director of Archives, City of New Orleans, to librarians and members of the respective staffs of the libraries of Louisiana State University, Yale University, New York Public Library, Library of Congress, the Cabildo, New Orleans, and the Louisiana Historical Society for the many courtesies extended the writer.

In conclusion, thanks are extended to Executive Secretary A. Everett Peterson of the New York City Art Commission for a reproduction copy of the Livingston portrait. Special obligation to General John Ross Delafield of New York City is acknowledged for permission to reproduce pictures of the Montgomery Place Mansion House and the Jackson portrait.

WILLIAM B. HATCHER

Baton Rouge, Louisiana
March 15, 1940

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From a portrait by John Trumbull in the New York City Hall. Reproduced from a photograph received through the courtesy of Executive Secretary A. Everett Peterson of the New York City Art Commission.

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The Mansion House, which Janet Livingston, widow of General Richard Montgomery, built in 1802–1803, and the entire Montgomery Place came into the possession of Edward Livingston on the death of his sister in 1828. Reproduced from a photograph furnished through the courtesy of the present owner, Brigadier General John Ross Delafield, New York.

EDWARD LIVINGSTON

Chapter I

A PROMINENT NEW YORK FAMILY

THE early political history of New York state is as difficult to comprehend as is that of a later period to which James Parton alludes in his *Life of Andrew Jackson* as that most unfathomable of subjects, the politics of New York. Party lines were forming among the patriots as early as 1774 over a policy of intercourse with the mother country. As the years passed, the lines of cleavage became more sharply drawn, and the political contests were conducted with increasing bitterness. The leaders were men of wealth, education, and culture whose patriotic zeal was unsurpassed by those of any other state. Theoretically, they believed in the liberties of the people and so stated in the first article of the state constitution of 1777. Practically, they feared the passions of the multitudes as much as the tyranny of kings and proceeded to restrict the rights of suffrage greatly by adding a property qualification clause in subsequent articles of the same instrument.[1]

Politics was an important business; and the leaders, being practical politicians, recognized the value of keeping power in the hands of a few. During the early days of the Republic the majority of the men of wealth and

[1] *The Constitution of the State of New York* (Fishkill, 1777), Arts. I, VII, X, XXIII. See also, Francis N. Thorpe (comp.), *The Federal and State Constitutions . . .* (Washington, 1909), V, 2623–38. Thorpe used an 1842 reprint instead of the 1777 edition.

influence were Federalists. George Clinton, head of the powerful "Clinton family," was, however, the leader of a strong opposition party known as the Anti-Federalists in the ratification period, a majority of whom later became Republicans. Apostasy was practically unknown; but, in time, the factional strife in the Federalist ranks over the distribution of the spoils resulted in defections that were ultimately responsible for the defeat of that party.

The first important defection from the Federalists occurred in 1790, following the call of a political meeting of the Livingston family by its leader Robert R. Livingston.[2] The results of this conference were far-reaching, as the shifting of the family's allegiance was in a large measure responsible for the domination of the state and national politics by the Republicans for several decades following the turn of the century. It also made possible the political advancement of Robert's youngest brother, Edward Livingston.

The Livingston family with its numerous connections was one of the largest, wealthiest, most influential, and politically active kindred groups in the state of New York.[3] The interest of the various members of the family in politics was not a recently acquired characteristic, as is evidenced by the activities of their progenitors. The Livingston family of America is descended from Sir Alexander Livingstone, who in 1437 was made one of the guardians of the infant King James II of Scotland.[4] Alexander's descendant, Robert Livingstone, came to

[2] Jabez D. Hammond, *The History of Political Parties in the State of New York* (Cooperstown, 1846), I, 107.

[3] Henry Adams, *History of the United States* (New York, 1889–1891), I, 108–109.

[4] Theodore Sedgwick, Jr., *A Memoir of the Life of William Livingston* (New York, 1833), 20.

the colony of New York about 1675, eliminating the final vowel from his name on the way. In 1686 he was granted the patent to Livingston Manor,[5] which by 1715 comprised approximately 160,000 acres on the east bank of the Hudson River about halfway between Albany and New York City.[6]

This energetic young immigrant soon became one of the leading men of colonial New York; and, being interested in politics he served the colony as Secretary of Indian Affairs for thirty years, Secretary of the Albany Commission, town clerk, and collector.[7] During the period 1709 to 1714 he was a member of the General Assembly from the Albany district and from 1716 to 1726 he represented Livingston Manor in that body and was its presiding officer for seven years.[8] It was Robert Livingston and Peter Schuyler who were commissioned to receive the charter of the city of Albany from the Governor of the colony.[9]

In 1679 Robert Livingston married a widow, Alida van Rensselaer, nee Schuyler.[10] Their grandson, Judge Robert R. Livingston, later a member of the Stamp Act Congress, was married in 1742 to Margaret Beekman of Rhinebeck.[11] He received from his father, Philip, the

[5] E. B. O'Callaghan (comp.), *The Documentary History of the State of New-York* (Albany, 1849–1851), III, 622–27.

[6] *Ibid.*, 690–702.

[7] *Ibid.*, 725–28; E. B. O'Callaghan (ed.), *Documents Relative to the Colonial History of the State of New York* (Albany, 1856–1861), III, 315, 441, 535, 771–72.

[8] O'Callaghan (comp.), *Documentary History of the State of New-York*, III, 727–28.

[9] Sedgwick, *Memoir of the Life of William Livingston*, 24.

[10] O'Callaghan (comp.), *Documentary History of the State of New-York*, III, 727.

[11] Edwin Brockholst Livingston, *The Livingstons of Livingston Manor. . .* (New York, 1910), 555.

13,000-acre tract, which he called Clermont. His holdings were increased by 240,000 acres of land at the death of his father-in-law, which made him without exception the richest landholder in New York.[12] Like a great many colonial families, and especially the Livingston families, that of Robert R. and Margaret Livingston reached large proportions. Of their eleven children,[13] the second and the last, Robert R. and Edward, assured the family name a permanent place in history by their contributions in the fields of law, politics, and diplomacy.

Edward Livingston was born at Clermont, Columbia County, New York, on May 28, 1764.[14] His early education was received at home, at Albany, and at Esopus, now Kingston. In 1779 he entered the junior class of Nassau Hall, now Princeton University. Upon his graduation in 1781 he began the study of law at Albany under the future chancellor, John Lansing. Here he was thrown into intimate contact with such brilliant legal minds as Alexander Hamilton, Aaron Burr, and James Kent. After the British evacuated New York, in 1783, Livingston went there to complete his legal studies and was admitted to the bar in 1785. Although he had not been a very diligent student of the classics at Nassau Hall, his newly aroused interest in the Roman law now caused him to review his Latin, as well as to learn Spanish and French.[15] In New York there was another stimulus to his study of Latin. He became interested in

[12] Gustavus Myers, *History of the Supreme Court of the United States* (Chicago, 1912), 140.

[13] Livingston, *Livingstons of Livingston Manor*, 555–57.

[14] *Ibid.*, 557.

[15] Mrs. Margaret Livingston to John Jay, April 21, 1782, in Henry P. Johnston (ed.), *The Correspondence and Public Papers of John Jay, 1794–1826* (New York, 1890–1893), II, 299.

Mary McEvers, a merchant's daughter,[16] and had recourse to the Latin poets to aid his love letters. They were married in 1788. Livingston's brother John later married a sister of Mary.

All these dates show that Edward Livingston's most impressionable age coincided with a momentous period in American history. Born the year before the passage of the Stamp Act, he was sent away to school in the fall following Concord and Lexington. In 1776 the Declaration of Independence, which his brother Robert helped to draft, was signed; and his brother-in-law, Richard Montgomery, was killed at Quebec. Two other brothers-in-law were in the army, and his brother John was manufacturing powder for the troops. During 1777, memorable for Burgoyne's surrender, Kingston, where he was attending school, became the capital of the state for a short time. In order to avoid the British, the first "Convention of the State of New York" convened in an adjourned session there on March 12 and, on May 20, adopted the constitution that remained the supreme law of the state for forty-four years. Robert Livingston, Edward's brother, who was serving in both this convention and the Continental Congress, was appointed Chancellor. Through his relatives Edward made the acquaintance of Washington, Lafayette, and other notables at an early age. He entered Nassau Hall a few months after Wayne stormed Stony Point, and lived on the campus that had been the scene of one of Washington's victories. The surrender of Cornwallis came a few months following his graduation and he moved to New York the year of the treaty of peace. He was admitted to the bar dur-

[16] Catharina Van Rensselaer Bonney, *A Legacy of Historical Gleanings* (Albany, 1875), I, 86.

ing the sessions of the Alexandria convention and was married within twelve months after the Federal Constitution was drafted. The next April he saw his brother Robert administer the oath of office to President Washington.[17]

During the last third of the eighteenth century and in the first decade of the nineteenth, the Livingston family was not only a potent factor in New York politics, but also a powerful influence in the councils of national leaders who were responsible for the policies of the government. Robert R. Livingston, the family leader, was one of the gifted men of his time; he possessed great natural ability, a brilliant mind, and rare judgment. He occupied an important position in the Revolutionary government, and his advice was sought by the members of his political party.

This family leader became the guide and counsellor of his brother Edward following the death of their father in 1775. Believing that a knowledge of politics was an essential part of the education of a Livingston, Robert determined that this youth seventeen years his junior should receive thorough training in the practice of politics. At an early age Edward exhibited a keen interest in the subject and, under the guidance of his tutor, became familiar with the intricacies of the game.[18] He could have had no better instructor, and certainly no other school could have offered more thorough courses in practical politics than were to be found in New York.

In times of great stress and danger men mature early; so did Edward Livingston. His early interest in the im-

[17] Milledge L. Bonham, Jr., "Forgotten American Statesmen," in *American Mercury* (New York), II (1924), 493–94.

[18] Charles H. Hunt, *Life of Edward Livingston* (New York, 1864), 30–38.

portant events of the day was to be expected as these matters were usual topics of discussion in the homes of his mother and brothers where many of the leaders were frequent guests. New York was an important military and commercial center during the Revolutionary period; and, sooner or later, most of the important leaders were visitors to the city. Thus many opportunities were afforded young Livingston for making contacts and forming friendships that later were of practical value. While the majority of these earlier contacts were with the members of the party later known as the Federalists, he did not confine his associations to members of that group.

At the age of twenty-one Livingston was admitted to the bar and opened his office at 51 Queen Street, New York City.[19] Although the city bar numbered less than forty, it counted among its members such men of high professional standing as Alexander Hamilton, Egbert Benson, Robert Troup, Morgan Lewis, William S. and Brockholst Livingston, James Kent, and Aaron Burr. That Livingston gained at once a respectable and soon an eminent standing among the members of his profession bespeaks for him ability, energy, and early industry. He possessed an analytical mind and, in the preparation of his briefs, developed an ability for clear and logical thinking. Through his frequent appearance at court, he gained an ease and poise in debate that was of great value in his political career.

The large family connection, the strong influence of the family name, and the Chancellor's reputation as a lawyer were valuable assets to the young attorney, who escaped the usual struggle against dire necessity experienced by most young lawyers. It was fortunate that he

[19] *Ibid.*, 51.

began his practice just when New York was beginning its rapid expansion following the close of the war. Litigation increased in proportion to the growth of the city, and the old court building at the corner of Wall and Nassau streets became a center of unusual activity.

The long military occupation of the city by the British, the losses arising from the suspension of rents, the processes for the confiscation of the property belonging to the Tories, the careless handling of records resulting in questionable property titles, the change in money values, and the tightening of credit—all these gave rise to numerous legal questions. Livingston secured a large portion of this business and accumulated a modest fortune from the lucrative practice that he attained. During the period extending to 1794, his reputation as a lawyer steadily increased.

Young Livingston was socially inclined and, without neglecting his professional duties, availed himself of every opportunity to cultivate a standing and influence in the community. Military service has never been considered a political liability, and so at the age of twenty-two he accepted a commission as lieutenant in the state military forces and retained this rank until March 17, 1789, when the State Council of Appointment promoted him to the rank of captain. An uneventful four-year military career was terminated when he resigned from service in September, 1790.[20]

Thus, in the early life of Edward Livingston there appears an imposing array of qualifications and circumstances that forecast for him the important part he was to play in politics. Just as the drama of American nationalism was reaching its climax, he was born into a

[20] Hugh Hastings (comp.), *Military Minutes of the Council of Appointment of the State of New York* (New York, 1901), I, 109, 153, 185.

family of prominence, wealth, and political influence. His naturally brilliant mind was made keener by his education in the best schools afforded by the New World. His admission, while yet a youth, to the distinguished New York bar provided him with opportunities to widen his acquaintance and to broaden and deepen his understanding of politics. His opportunity to render military service enhanced his chances of securing political preferment. Family, schooling, early opportunities, and the times were all on his side.

Chapter II

POLITICAL APPRENTICESHIP

IN political matters Edward Livingston accepted Chancellor Robert R. Livingston's leadership and thus in a large measure avoided the criticism that responsibility engenders. The Chancellor's appointment to the position of secretary of foreign affairs by the Continental Congress in 1781 not only opened up for Edward new channels for making contacts, but made it possible for him to acquire an intimate knowledge of governmental operations under the Articles of the Confederation. As the inherent weaknesses of the government were revealed to him, he became an ardent advocate of a federal constitution. Practically all of the important members of the New York bar were opposed to the Clinton faction which had re-elected George Clinton governor triennially since 1777.[1] Although Livingston was not particularly active in politics at this time, he did not hesitate to take a definite stand when public questions arose which he felt affected the welfare of the state and nation.

Governor Clinton's dilatory policy toward the calling of a state convention to consider the adoption or rejection of the Federal Constitution caused considerable anxiety among the conservative interests of the state. The

[1] Hammond, *History of Political Parties in the State of New York*, I, 41.

Livingstons were favorable to the ratification of the new instrument and very much opposed to the Clinton idea of holding off and allowing the other states to try out the scheme. Edward Livingston, although not a member of the Assembly, rendered valuable service in the legislative fight for the calling of a state convention to consider the matter. It was a family friend who introduced the measure in the state Assembly calling for the convention and the election of delegates.[2]

This fight was continued in the convention that met at Poughkeepsie in June, 1788. Of the sixty-one assembled delegates, two thirds were opposed to the Constitution,[3] and the Federalists throughout the country became alarmed over the possible failure of New York to ratify. The opposition, under Clinton's leadership, gave no indication of weakening until after the defeat of Patrick Henry in Virginia. Again, the influence of the Livingston family was found on the side of conservatism. It was in the home of John Jay, says Alexander, that "Chancellor Livingston made those arrangements with Hamilton and Jay, the Morrises and the Schuylers, that resulted in the overthrow of Governor Clinton and his supporters in the convention which ratified the Federal Constitution." [4] The last blow needed for its ratification by a vote of thirty to twenty-seven was the speech delivered by Gilbert Livingston, a cousin of Edward.[5]

In 1789 two important events occurred in New York that were far-reaching in their ultimate results. Robert R. Livingston administered the oath of office to George Washington as first chief executive of the young repub-

[2] *Ibid.*, 19.

[3] William Jay, *The Life of John Jay* (New York, 1833), I, 266.

[4] De Alva S. Alexander, *A Political History of the State of New York* (New York, 1906), I, 78.

[5] *New York Convention, 17 June, 1788* (Fishkill, 1788), 37.

lic. The state of New York experienced its first genuine gubernatorial campaign, and George Clinton was re-elected for his fourth consecutive term. Neither of these events was viewed with apprehension, since no one at that time considered that they might in any way affect future political developments. However, they set in motion a train of political events that contributed in part to the domination of national policies by the Republicans and the disappearance of the Federalists.

Clinton's activities in the state fight over the adoption of the Federal Constitution made it inevitable that he should be opposed in the next gubernatorial race. The governor's election was the first real political conflict in the history of New York and became sharp and bitter. It is significant also that it was the last important contest in which the Federalists of the ratification period presented a united front. This anti-Clinton faction, under the leadership of Hamilton, selected Robert Yates as their candidate. Yates had voted against the adoption of the Federal Constitution and had been an ardent supporter of Clinton.[6] In selecting him as their candidate, the Hamiltonian forces hoped to form a coalition with the more moderate men of the Anti-Federalist faction, as they realized that only by such a combination could they defeat Clinton. However, the arguments of William Duer, the powerful influence of Chancellor Livingston, the popularity of Jay, and the leadership of Hamilton could not avail. Clinton was elected by a majority of 429 in a total vote of 12,353.[7]

Chancellor Livingston may have failed to realize the

[6] John C. Hamilton (ed.), *The Works of Alexander Hamilton* (New York, 1850–1851), II, 478–79.

[7] Hammond, *History of Political Parties in the State of New York*, I, 41.

advantages that he and his family could derive from the restriction of suffrage, when, in 1777, he assisted John Jay in preparing the draft of the state constitution, but he certainly became thoroughly aware of them following the campaign and election of 1789. The constitution provided for a graduated scale of suffrage with a property qualification requirement. This requirement ranged from a value of twenty pounds for voters participating in the selection of assemblymen to one hundred pounds, free of debt, for those voting for governor. "The right of suffrage was so restricted that as late as 1790, only 1,303 of the 13,330 adult male residents of New York City possessed sufficient property to entitle them to vote for governor." [8] Such conditions offered possibilities of political preferment to those members of large and well-to-do families who recognized and utilized their advantages. The constitution further provided that all state, county, city, and village officials except the governor, lieutenant governor, state treasurer, and city officers below the rank of mayor were to be appointed by the State Council of Appointment. With the exception of the governor, the members of the council were to be selected by the state Assembly.[9] These conditions offered opportunities for the building of a powerful political machine, which had not been overlooked by George Clinton. Chancellor Livingston, being a practical politician, also appreciated these facts; and, since he desired political preferment, his deaf ear was not turned toward Clinton when the latter made overtures for peace, and at a later day suggested an alliance beween the Clintons and Livingstons.

When Washington was inaugurated, one of his close

[8] Alexander, *Political History of the State of New York,* I, 15.
[9] *Constitution of the State of New York* (1777), 24.

personal and political friends, Hamilton, gained control of the dispensing of Federal offices in New York. Robert Livingston naturally expected to have his services to the new government rewarded. He was one of the recognized Federalist leaders, and his associates were the leading Federalists; his principles were the pillars of his party; and his ambitions centered in the success and strength of his country. He and seven other members of the Livingston family, together with the Schuylers, had overthrown the Clintons in 1788 and helped to turn the Confederation into the Union. He and Hamilton were personal and political friends, and he had followed Hamilton's leadership in the campaign against Governor Clinton. Certainly the new Union, which he had helped to create, would recognize his services and reward him.

As was commonly stated at this time, political New York was like Caesar's Gaul, divided into three parts—the Clintons, the Livingstons, and the Schuylers. James Parton says, "The Clintons had *power,* the Livingstons had *numbers,* the Schuylers had *Hamilton.*" [10] If there were no other reason, political expediency certainly required that the Livingstons should not be disregarded in the distribution of Federal patronage. The Chancellor was eligible for promotion to the position of chief justice of the United States, but this went to Jay, who was closer to Hamilton, just as in the case of Philip Schuyler, when it came to selecting United States senators. Gouverneur Morris received the mission to France, Thomas Pinckney went to England, William Short was appointed to the court at Madrid, and David Humphreys departed for Portugal. The Livingstons were ignored.

[10] James Parton, *Life and Times of Aaron Burr* (New York, 1858), 169.

Although the Federal offices in New York were of trifling importance compared to the state patronage, the new Secretary of the Treasury Hamilton used them to strengthen federalism and if possible to destroy Clinton. Governor Clinton felt the full power of the Federalist combination, but he governed his conduct with the toleration and foresight of a master politician. The call had been so close for the Governor in 1789 that he immediately began to prepare for a repetition of the contest in 1792. He declined to punish those who had deserted his standard and did not bar the promotion of Robert Yates to the office of chief justice of the state Supreme Court. He appointed Aaron Burr attorney general, and thus secured to his ranks a group of talented and spirited young men who were ardent admirers of Burr.[11] If Clinton thought himself fortunate in gaining Burr, he was still more fortunate in securing the support of the influential Livingston.

Hamilton's funding system, especially the proposed assumption of state debts, afforded a plausible cause for opposing federalism; and ostensibly for this cause, following a family meeting, the Livingstons ceased to be Federalists.[12] True, some of the less politically prominent members in Columbia County remained Federalists, but the conspicuous leaders who were responsible for the family's "name in history" refused to be associated any longer with a party whose leader was "a merchant's clerk from the West Indies."

The first public "notice of the Livingston break was in the election of a United States senator in 1791." Hamilton's father-in-law, Philip Schuyler, confidently ex-

[11] Alexander, *Political History of the State of New York*, I, 48–49.

[12] Dixon R. Fox, *The Decline of Aristocracy in the Politics of New York* (New York, 1919), 64.

pected to be continued in office, since his re-election was understood when he had drawn the short term. A few of the Federalist members of the Assembly preferred Aaron Burr as they resented Hamilton's influence over Schuyler. Governor Clinton was not slow to grasp this opportunity of striking back at Hamilton and of placing one of his own followers in such an important post. The support of the Livingston faction was necessary for the success of the scheme. And this was secured when Clinton promised Burr's place as attorney general to Morgan Lewis, a brother-in-law of Edward and Chancellor Livingston. Thus early, the Livingstons profited by their change of party affiliations, and the Chancellor was pleased with the part that he had played in delivering a powerful blow to the Hamiltonians through the defeat of Schuyler.[13] From this time forward, the political fortunes of the Livingstons were on the upgrade; the prestige of victory so necessary to political success spurred them on to greater activity.

The gubernatorial election held in April, 1792, was bitterly contested. George Clinton was nominated for re-election, and the Federalists selected John Jay as their standard bearer. "Seldom has an election," says Alexander, "been contested with such prodigality of partisan fury. The rhetoric of abuse was vigorous and unrestrained; the campaign lie active and ingenious; the arraignment of class against class sedulous and adroit, and the excitement most violent and memorable. If a weapon of political warfare failed to be handled with

[13] New York *Journal and Patriotic Register*, September 28, 1791, stated: "The election of Burr and defeat of Schuyler" to the United States Senate was due to the influence of the Livingstons who "had recently embraced the principles of the Republican party." See also, Hammond, *History of Political Parties in the State of New York*, I, 51.

craft and courage, its skilful use was unknown." [14]

As early as February the campaign, which was epoch-making in the history of politics, was actively in progress. Jay was pictured as an aristocrat that would condescend to accept the office if elected. He was accused of saying that " 'there ought to be in America only two sorts of people, one very rich, the other very poor.' " In support of this canard the Clintonian newspapers skillfully and effectively employed Jay's aphorism that "those who own the country ought to govern it" by pointing to the state constitution, which he drafted, to prove that only the well-to-do could vote. The Federalists were equally adept at misrepresentation. They made much of Clinton's use of patronage and his opposition to the Federal Constitution. The Governor was even accused of profiting secretly by the sale of public lands.[15]

Jay lost the support of the Dutch, largely the slaveholders of the state, as he was accused of wishing to rob them through his efforts to abolish slavery at the time of the adoption of the state constitution. Clinton gained support by the fierce attack on Hamilton's financial system, particularly his plan for the assumption of state debts. The reign of speculation that followed in the year 1791 was attributed to Hamilton's schemes and the reports of the Secretary of the Treasury were denounced as being "dangerous to liberty." He was accused of employing the clever device of assumption to enslave the people and of foisting upon the nation a fiscal system that was "a dishonorable scheme."

The Federal foreign policy became a live issue in the

[14] Alexander, *Political History of the State of New York*, I, 52.

[15] *Ibid.*, 54; Frank Monaghan, *John Jay, Defender of Liberty* (New York, 1935), 326–33.

campaign, and it was at this time that those feelings which furnished a distinguishing characteristic of the two parties were just beginning to take root in the minds of the party leaders. The Federalists criticized the outrages committed by Jacobins of France and expressed an apprehension that the intrigues of the French government might involve the American republic in a European war. They accused the Republicans of an undue attachment to France and attempted to hold them answerable for the wild theories both in politics and religion which at times appeared in France. The Republicans charged the Federalists with being unreasonably favorable to the British nation and claimed that this position was due to their commercial connections with the mercantile interests of Great Britain. The Federalists were further charged with hostility not only to the French Revolution, but also to liberty and freedom in this country as well as in France.

With the party lines of cleavage developing, it was recognized early in the campaign that the election would be closely contested and that victory or defeat would depend upon the change of relatively few votes. The party leaders redoubled their efforts, and both the Federalists and Republicans drafted every available worker for active service. Many of these junior workers rendered effective service and soon rose to political prominence and occupied "more influential positions" than some of the leaders of the fight. This was especially true in the case of Edward Livingston, who, up to the opening of the campaign, had devoted most of his time and talents to his chosen profession of law.

It greatly distressed Jay that the Livingstons opposed him. Among his most bitter enemies were the Chancellor and Edward, his wife's cousins, and Brockholst Liv-

ingston, her brother. The last had been Jay's private secretary when at the Court of Madrid, but now he was most vituperative and violent in his opposition to his brother-in-law. Letters and broadsides ridiculing the Chancellor erroneously attributed to Jay greatly enraged the Livingstons. Although the Chief Justice denied the insinuation, the Chancellor, who had been attacked in a vulnerable spot, continued his attack with all the zest of a novice. In his restricted sphere of action, Edward was as violent in his speech and as reprehensible in his actions as either the Chancellor or Brockholst.

Although the interest in the outcome of the election was keen, the ballots from the interior counties were slow in reaching the office of secretary of state for the official canvass. Under the law the votes for governor, lieutenant governor, and senators were canvassed by a committee composed of twelve members of the legislature, each house choosing six from its membership. The inspectors of election were required to seal the ballots and deliver them to the sheriff of the county or his deputy, who must convey them to the secretary of state for delivery to the canvassing committee. Statutory provision made the decision of the canvassers final.[16]

The first election news received in New York indicated Jay majorities.[17] The Federalist leaders were jubilant over the impending victory; the Clintonians were determined to employ every stratagem to retain their leader in office. In their search for some legal technicality whereby they might rob Jay of his victory, the Governor's faction learned that there had been minor

[16] Hammond, *History of Political Parties in the State of New York*, I, 62; Monaghan, *John Jay, Defender of Liberty*, 333–40.

[17] Robert Troup to Jay, May 20, 1792, in Johnston (ed.), *Correspondence and Public Papers of John Jay*, III, 424.

infractions of the election law in three counties. Immediately, Edward and Brockholst Livingston suggested that the votes from Otsego and Tioga counties be challenged.[18] It was reported that Jay had an estimated majority of six hundred in Otsego and two hundred in Tioga. In order to appear consistent, it was decided to contest the Clinton County returns, where the votes were reported to be equally divided.

In Otsego County the sheriff's term had expired and his successor had not qualified for the office, consequently he continued to perform the duties of the office. He had received the ballots from the inspectors of election of his county and had turned them over to a special deputy, who had deposited them with the Secretary of State. While the law directed "that the votes of *every* town" should be put into the box, the sheriff sent the returns from one town "under a paper cover." [19] In the case of the Tioga returns, the deputy commissioned to deliver them to the Secretary of State became ill and turned them over to his clerk for delivery. The sheriff of Clinton County had the ballots delivered by a man who had not been deputized. However, in the three cases, all ballots were delivered without delay and all seals were intact. It was generally admitted that if the Otsego votes were counted Jay would be elected by a safe majority; consequently, a test case was to be made of the Otsego returns.

The Federalists were determined to compel a fair and honest canvass of the votes even though the decisions were to be rendered by a partisan Clinton board. Of the eleven members of the canvassers in attendance, seven were for the Governor. Yet, the Clintonians wished to

[18] Mrs. Jay to *id.*, June 10, 1792, *ibid.*, 431.
[19] Troup to *id.*, May 20, 1792, *ibid.*, 424–25.

avoid the open appearance of stealing the election. Legal justification was the cloak they sought to hide their fraud. Livingston called upon Jay's friend, Robert Troup, for a legal opinion against the validity of the Otsego votes. He argued "that the votes of one town being left out of the box all the other votes of the County must be lost." Although "struck with the indelicacy" of Livingston's request "upon a subject in which my feelings were so much concerned," Troup agreed to give his opinion. This he did, he explained to Jay, for the reason that "their views were corrupt and therefore that it would be right in me to counteract them if I could possibly do it." Livingston did not hesitate to assure Troup that he should experience no difficulty "in deciding against the votes, upon both the points" which he had raised. When pressed for an "opinion the next morning," Troup "gave it to Ned [Edward Livingston] plumply against him on both points. The opinion threw the party into consternation. A Cabinet Council of the Governor, the Chancellor, Ned, Brockholst, &c., was immediately called. Soon afterwards Brockholst went about almost like a madman vociferating against the legality of the return of the Otsego votes and roundly asserting that there was not a Lawyer out of this State that would give an opinion that the votes were legally returned." Troup's opinion did not deter Livingston as he continued to rummage all of his law books and practice every "strategem" with the canvassers. A majority of the lawyers of the city and a number from Philadelphia to whom the facts were submitted gave their opinion in favor of the Otsego votes upon legal grounds as well as "upon principles of public policy." [20] Much was written "upon the subject, and every possible man-

[20] *Ibid.*, 425–26.

euvri'g practiced by Clinton and his partners, the Livingstons, to dull (?) the canvassers." All this discussion was so acrimonious and the alleged violations of law so technical that the Clintonians determined to submit the legal aspects of the case to their United States senators, Rufus King and Aaron Burr. "This reference," Troup informed Jay, "was understood by all of us as intended to procure a cloak for the Canvassers to cover their villainy in rejecting the votes of Otsego. They knew Burr to be decidedly with them, and that he would give them an opinion to justify their views." [21] Troup was correct in his opinion.

Burr delayed action as long as he could and when he was unsuccessful in inducing his colleague to join him in declining to act as referee he was forced to take a stand. In regard to the Otsego votes, he held them invalid since there was no *de jure* sheriff in the county. He based his opinion upon the British statutes respecting sheriffs which precluded the necessary compliance with the election law since there was no qualified sheriff in Otsego at the time of the election. Precedent in New York failed to substantiate his contention and, furthermore, Clinton earlier in the year had refused requests to appoint a new sheriff on the grounds that the old one would hold over until a successor qualified. King took the view that the election law should be interpreted in the light of furthering the right of suffrage. The rights of voters should not be jeopardized either by the negligence or by the misconduct of an agent charged with the duty of delivering the ballots. The *de facto* sheriff of Otsego, he maintained, had a legal right to return the ballots, which should be counted by the canvassers.[22]

[21] Troup to Jay, June 10, 1792, *ibid.*, 428.

[22] *Ibid.*, 428–29; Alexander, *Political History of the State of New York*, I, 57–58.

Upon receipt of the opinions, "the canvassers met and discussed the subject for upwards of two hours and then adjourned without coming to a decision." The following day, the lawyers of the city friendly to Jay's interests met and "determined to address the public upon the subject" giving a "formal opinion upon it as lawyers." The publication of the short opinion "threw the city into a greater ferment and increased the indignation against the attempt to reject the votes." It threw "the Clintonian lawyers also into a ferment; they went about the city to and from the place of canvassing like mad men." On June 9 the canvass of the Clinton County votes continued until it was found that Clinton's stronghold, Montgomery, had returned a majority of only thirty odd for him instead of the expected two hundred. "Upon this discovery, they broke up in confusion," adjourned "to Corre's to be more private," and announced their determination "to decide the question respecting the Otsego votes before they went further."

It was imperative that action be taken immediately, since the law required the canvass to be completed by June 12. The Clintonians knew that without the votes of these three counties the Governor would be returned by a margin of 108 votes.[23] Desperate, they quoted Burr's opinion and applied pressure to the canvassers. On Monday evening, June 11, they refused "to examine the vote of Tioga County" as it was "a certainty that that County alone" would give Jay a "majority independant [*sic*] of the votes of Otsego." [24] By a partisan vote of seven to four they rejected the Otsego and Tioga votes and for the appearance of consistency the Clinton County votes

[23] Troup to Jay, June 10, 1792, in Johnston (ed.), *Correspondence and Public Papers of John Jay*, III, 429–30.

[24] Mrs. Jay to *id.*, Monday Evening [June 11, 1792], *ibid.*, 432.

likewise were omitted from the final count.[25] Thus, the will of the people at the election had been negated by the canvassers who attempted to justify their action on the ground that the ballots from the contested counties had not been conveyed to the Secretary of State in accordance with the provisions of law.[26] Then, in order to destroy all evidence of their ignominious action, the canvassers burned the ballots in violation of customary procedure.

The action of the canvassers aroused the people to anger. Friends rushed into the Jay home "to vent their vexations"; meetings of protest were held; and the citizens of Otsego "threatened an appeal to arms." Robert Troup was very bitter and, to Jay, vehemently denounced the "flagrant attack" upon their rights. He asserted that should the people tamely submit to the outrage, they deserved "to be hewers of wood and drawers of water to the abandoned despots who claim to be our masters." Among the Jay followers the name of Livingston was opprobrium. Mrs. Jay, although too severe in her denunciation of the members of her family, probably reflected the public sentiment toward the Livingstons. To her husband, she poured out her angry resentment: "Oh, how is the name of Livingston to be disgraced! Brockholst, Edward, William, S. Maturin, etc., are to be of the number. Those shameless men, blinded by malice, ambition, and interest, have conducted themselves with such indecency during the election, and daily since the canvassing of votes, as to open the eyes of every one respecting their opposition to you. It is said, and I believe

[25] Troup to *id.*, June 13, 1792, *ibid.*, 433–34.

[26] *Impartial Statement of the Controversy Respecting the Decision of the Committee of Canvass in New York, 1792* (New York, 1792), *passim.*

it that Brockholst [her brother] and Ned [her cousin] first suggested the doubts on that subject." [27] Jay's attitude during this exciting period probably prevented bloodshed. Conducting "himself with remarkable forbearance and dignity," he urged conciliation and moderation when armed resistance appeared inevitable.

The contest left deep and lasting scars; it so widened the breach between the Federalists and the Livingstons that a reconciliation was impossible. Edward Livingston's active participation in the campaign and his sedulous maneuvers during the canvass marked him as a political factor to be considered in the future. Many of the contacts he made during these turbulent days were profitable; but the one with Burr, who held an unfortunate fascination for him, was almost disastrous on subsequent occasions. The favorable recognition Livingston earned in his initial effort was in part responsible for his decision to seek political preferment. As a politician and statesman he attained renown and distinction that compared favorably with his reputation as a jurist.

[27] Mrs. Jay to Jay, June 10, 1792, in Johnston (ed.), *Correspondence and Public Papers of John Jay*, III, 431.

Chapter III

A MEMBER OF CONGRESS FROM NEW YORK

THE division in American politics in accordance with Anglo-French cleavage in Europe, which had its beginnings in New York in the campaign of 1792, widened quickly and continued until Napoleon was definitely defeated and France ceased to be at war with the powers that surrounded her. The Federalists became more and more sympathetic with England; the Republicans more and more favorably disposed toward France. In 1793 France sent her king to the guillotine and almost immediately was at war with England and Spain. The year before, she had begun a war with Austria and Prussia. The French government called upon the United States to take part in the war and sent over Edmond Charles Genêt to persuade the Americans to do so. Washington, fearing that the ardent French partisans would by some rash act bring on war with England, issued a proclamation of neutrality, which both countries ignored.

Both the Secretary of State and the Secretary of the Treasury were opposed to war; but Thomas Jefferson wanted the benefits of neutrality to accrue to France, whereas Hamilton desired them to go to Great Britain. With the beginning of the European war, France opened to neutral nations the trade with her West Indian pos-

sessions. Under the so-called "rule of the War of 1756," England declared this unlawful, asserting that trade denied in time of peace could not be opened in time of war. Her men-of-war seized American ships bound for the West Indies and treated the captured crews with indignity. The Republicans took advantage of this opportunity to demand retaliation and made their first move in the House of Representatives. James Madison, guided by the reasoning of Jefferson, urged the United States to make restrictions on Great Britain's trade with this country if England placed limitations on American trade. William Smith of South Carolina, speaking for Hamilton, secured the postponement of Madison's resolutions by showing that they would injure the United States more than Great Britain since seven eighths of American trade was with England.

It soon became evident that the United States must come to an understanding with either England or France. The former disregarded the American contention that neutral ships made neutral goods and ordered the seizure of all neutral ships carrying French goods. The Republicans, early in 1794, adopted a more vigorous policy, ceased to plead for France, and began to demand war against England. Congress authorized the strengthening of the military forces of the country. The extreme Republicans supported the resolution of Jonathan Dayton of New Jersey to sequester British debts as a compensation for the losses sustained from the seizure of American ships. Favorable action by Congress could hardly have failed to provoke war. Washington, alarmed at the hostility against Great Britain, finally accepted the Federalist policy of coming to terms with England, and appointed John Jay special envoy to accomplish it. This action of the President had an important bearing upon

the results of the New York congressional elections, which were held in December of the same year.

In New York City, an acknowledged Federalist stronghold, the Republicans selected Edward Livingston as their candidate for Representative in Congress. Although unsuccessful in his several efforts to gain office, Livingston had been active in the councils of the party and was a strict organization worker. He was a member of the Columbian or Tammany Society [1] and he, along with a few other men of wealth and importance in the city, joined the Democratic Society of New York when it was organized early in 1794.[2] He had been nominated for the state legislature in 1791, in 1792, and again in 1793; yet prior to 1793 his vote was so small that it was not recorded in the papers. John Watts, the incumbent in Congress in 1794, one of Livingston's opponents for the state Assembly in 1791 and in 1792, received the highest number of votes of all candidates in the field in both elections.[3] Even in 1793 Livingston's defeat for the office of state assemblyman appeared inevitable from the opening of the canvass. In this state election there were three tickets in the field and the entire Federalist slate, composed of "citizens attached to the National Constitution, and that of the State," was elected.[4] With 214 votes, Livingston ranked fifteenth on the list of twenty-one candidates. He ran fifth on his own party ticket and was

[1] William Miller, "First Fruits of Republican Organization," in *Pennsylvania Magazine of History and Biography* (Philadelphia), XLIII (1939), 129 n.

[2] *Ibid.;* James Madison to Thomas Jefferson, December 21, 1794, in Gaillard Hunt (ed.), *The Writings of James Madison* (New York, 1900–1910), VI, 228–29.

[3] Miller, "First Fruits of Republican Organization," in *loc. cit.,* 139 n.

[4] New York *Daily Advertiser,* April 13, 1793.

led in the final count by two opponents [5] supported by certain groups of laborers.[6] Livingston's continued fight in season and out of season served not only to embarrass the Federalists but also to keep his name before the public.

The Democratic Societies were not reticent and publicly announced that their program was to elect Republicans to office.[7] In New York, as elsewhere, a vast majority of the members were men of small means who could exert no influence unless they combined and acted as a unit. The success of the organization as evidenced by its rapid growth in numbers and by its effective electioneering tactics was clearly revealed by the attack which the New York Federalist newspapers launched against the Society as early as March 1, 1794.[8] In retaliation the Society attacked the Administration upon the slightest pretext or no pretext whatever, but its only medium of counteracting the force of the Federalist press was that of the public meeting. The procedure at these meetings was to adopt resolutions, publish and forward them to their clubs elsewhere, and "to inform their representatives in Congress, what are the opinions of those they represent." [9]

The call issued by the Society for a public protest meeting at Tontine's Coffee House on February 27 brought so favorable a response that it became necessary to adjourn the session to "Broad Street in front of the

[5] *Ibid.*, April 4, June 3, 1793. [6] *Ibid.*, April 17, 1793.

[7] Miller, "First Fruits of Republican Organization," in *loc. cit.*, 120–22.

[8] New York *Daily Advertiser,* March 5, 1794; New York *Journal and Patriotic Register,* March 1, 8, 1794; New York *Weekly Museum,* March 22, 1794.

[9] New York *Journal and Patriotic Register,* March 4, 1794.

City Hall" [10] in order that the crowd might be accommodated. While the *Journal and Patriotic Register* claimed an attendance of "at least 2000 citizens at the town meeting," [11] the *American Minerva* spoke disparagingly of the size of the crowd and charged that individuals had been placed upon the committee who were conspicuous by their absence.[12] The *Minerva* further asserted that it was "a paltry class of artful and designing men" who were responsible for the meeting and that the speeches were "pitiful ebullitions of an incoherent mass of people." [13] Nevertheless, the Republicans were successful in their political maneuver to focus public attention upon the seeming Federalist indifference to the military safety of New York. Asserting that the national government was negligent in providing adequate protection for the city, the assemblage called for the appointment of five citizens to formulate a petition requesting the state legislature to supplement the amount that Congress had appropriated for this purpose and to forward the same by express to Albany. The activity of Livingston became quite apparent with his appointment as chairman of the committee.[14]

The influence of the protest meeting and the effectiveness of the Society's recruiting program were shown in the April elections for the state legislature. While the Federalists elected their entire ticket in the city, the Republicans polled more votes for their leading candidate than they had ever cast at any previous election.[15] This

[10] *Ibid.*, March 1, 1794; New York *Weekly Museum*, March 22, 1794.

[11] New York *Journal and Patriotic Register*, March 1, 1794.

[12] New York *American Minerva*, February 28, 1794.

[13] *Ibid.*, March 1, 3, 1794; Miller, "First Fruits of Republican Organization," in *loc. cit.*, 126.

[14] New York *Weekly Museum*, March 22, 1794.

[15] Miller, "First Fruits of Republican Organization," in *loc. cit.*, 132.

favorable showing encouraged them to hope and plan for victory in the coming congressional fight later in the year. Livingston had gained favorable publicity from his participation in the public meeting; he had willingly sacrificed himself to the party welfare by agreeing to stand for state assemblyman in 1793 when defeat was inevitable; and he had continued to render yeoman service to the cause; consequently, the organization leaders could not afford to ignore him. With the powerful influence of his family, with his party regularity and activity, and with the paucity of men of wealth and importance in their ranks, it was logical for the Republicans to select Livingston as their candidate to oppose Watts, the Federalist Congressman. The usual procedure of holding a public meeting to launch the campaign was followed. On the evening of November 14, 1794, the members of the Democratic Society assembled at Hunter's Hotel and nominated Livingston for Congress, unanimously adopting resolutions pledging him their votes and support.[16] No announcement of this action, however, appeared in the press until November 26 when a statement was also carried to the effect that Watts was a candidate for re-election.[17]

The short and bitter contest came to an end with the closing of the polls on December 11. The Federalists feared the Republicans, for they recognized their "superior organization." They attempted to foment internal strife in the Tammany Society over the war issue and were successful to a certain extent. While the Society had always acted as a unit, the two contending factions refused to attend a joint meeting as each feared

[16] *Ibid.*, 139 n.; New York *Journal and Patriotic Register,* December 6, 1794.

[17] New York *Journal and Patriotic Register,* November 26, 1794.

that the vote of the whole membership would necessitate the surrender of its position on the question. The breach, which was made at this time, later became so wide that whenever the Federalist clique, under the guidance of the Grand Sachem, would meet and pass commendatory resolutions concerning the President, the Republican group, under the leadership of the Grand Secretary, almost immediately would follow with its gathering to pass resolutions designed to counteract those of its rival.[18] The Republicans were equally energetic in their attempts to gain new supporters for their workers; they made a personal canvass of every elector and accurately recorded each voter's political affiliation. The work of each canvasser was checked by that of another and effective use of the questionnaire was made in evaluating public sentiment.[19] The results proved so favorable to Livingston's candidacy that his supporters had the temerity to predict his election by a majority of approximately one hundred votes.[20]

"Personal issues, issues of war and peace, Britain and France, excise and insurrection—none were lacking" in this campaign.[21] The Republican claim of victory alarmed the Federalists as was shown when their newspapers no longer centered the attack entirely upon the Society but directed it at Livingston personally. Naturally the Republican press retaliated in a vituperative attack on the private character of Watts. Typifying the bitter charges hurled back and forth by the press during the contest, "The Federalists proclaimed Edward Liv-

[18] *Ibid.*, January 21, 1795, *et seq.*; New York *Herald*, February 7, 1795.

[19] See New York *Daily Advertiser*, *American Minerva*, *Herald*, *Journal and Patriotic Register*, and *Weekly Museum* for this period.

[20] New York *Journal and Patriotic Register*, December 13, 1794.

[21] Miller, "First Fruits of Republican Organization," in *loc. cit.*, 138.

ingston young and untried. To which the republicans replied that John Watts . . . had been tried and found wanting. Livingston is of the French party, shouted the federalists. Watts is a hated Britisher, replied the republicans. Livingston and his family are unprincipled speculators; Watts is a 'paper man,' retorted the republicans. Livingston is a great orator; Cicero with the code of Cataline, replied the federalists. Watts is dependable; a robot without a tongue in his head, retorted the republicans." [22]

Most of the charges were ignored by the two candidates, but Livingston felt it necessary to reply to "Senex" who accused him of being a welcher in the *Daily Advertiser*.[23] In fairness to himself, his family, and his political followers, he felt that it was necessary to refute the charge of refusing to pay his creditors because of the heavy losses he had sustained through speculation. "Those who know me," he wrote to the *Daily Advertiser,* "are acquainted with the punctuality with which, in spite of heavy losses, my pecuniary engagements have been fulfilled; but others of my fellow-citizens, whose good opinion I have ever been solicitous to preserve, might credit the malignant falsehood, if I should not, as I do now, explicitly deny that I have ever refused payment of a just debt, or discharged one with less than the whole amount." [24] And for good measure a friend of his who signed himself "A Plebeian" charged "Senex" of acting with malice and of being a coward who feared the consequences of revealing his identity.[25]

Two days after the polls closed the *Journal and Patriotic Register* remarked that "the election in this dis-

[22] *Ibid.*, 139. [23] New York *Daily Advertiser,* December 2, 1794.
[24] *Ibid.*, December 6, 1794.
[25] *Ibid.*, December 9, 1794; Hunt, *Life of Edward Livingston,* 62–63.

trict has been a severely contested one." [26] The results did not hinge upon the personal issue but upon the effectiveness of the two political organizations.[27] For the first time the Federalists faced an enthusiastic, practical, disciplined, well-organized opposition which had them on the defensive from the beginning of the campaign. The Republican forecast of victory was not unwarranted, for their estimate of a majority of one hundred proved to be too conservative. The results of the election announced from Albany early in February indicated that Livingston carried five of the seven wards of the city and defeated Watts by a majority of 205 out of a total of 3,481 votes cast.[28]

During the year that intervened between Livingston's election and his taking of a seat in Congress, many events occurred that tended to accentuate his European prejudices. John Jay, whom the state canvassers had counted out in the gubernatorial election of 1792, was in England attempting to negotiate with that nation a treaty favorable to the interests of the United States. The Federalists gained control of the New York Assembly and the Council of Appointment. In January, 1795, the state Assembly re-elected Rufus King as United States senator. Governor Clinton, realizing that under existing circumstances he was not politically available, announced his retirement from politics.[29] After a careful canvass of the situation, the Federalists again chose John Jay as their candidate for governor. The Republicans, after anxiously looking about for a candidate, finally

[26] New York *Journal and Patriotic Register,* December 13, 1794.

[27] Miller, "First Fruits of Republican Organization," in *loc. cit.,* 140.

[28] New York *Journal and Patriotic Register,* February 7, 14, 1795; New York *Weekly Museum,* February 7, 17, 1795. The returns showed the vote as follows: Livingston, 1,843; Watts, 1,638.

[29] New York *Weekly Museum,* January 30, 1795.

selected Robert Yates, Hamilton's coalition candidate of 1789, as their party leader. Although there was little hope of a Republican victory, the campaign was quite spirited, and Livingston did what he could in the futile attempt to defeat Jay.

The result of the state canvass was declared May 26, two days before Jay arrived in New York from the Court of St. James after an absence of more than a year. "A large concourse of citizens," says William Jay, "assembled to welcome their new governor and to greet the envoy whose successful mission procured peace to the country; the crowd attended him to his dwelling, and the ringing of bells and the firing of cannon evinced the joy his arrival had inspired." [30] Jay was inaugurated governor July 1 and, the day following, the terms of the treaty became public. "This act," says William Jay, "was putting the torch to that vast mass of combustibles which the party had long been engaged in collecting and the intended explosion instantly followed." [31] Livingston joined in the chorus protesting against the President's proclaiming the treaty, but he refrained from adding publicly to the storm of vituperation that swept the country and seemed to center in New York.[32]

There was no question, at least in his attitude toward the European situation, that Livingston was a Republican in nature, in opinion, and in associations. His attitude toward England and France antedated this party division and continued as long as he lived. His admiration for France even preceded her decision to assist the colonies in their struggle with the mother country. Many of the young men of France who came over to fight in the Revolution were more or less frequent visitors in

[30] Jay, *Life of John Jay*, I, 356. [31] *Ibid.*, 360.
[32] New York *Herald*, July 22, 1795, *et seq.*

the Livingston home. The most important of these was Lafayette, for whom young Livingston formed a deep and lasting attachment. To him, Lafayette typified France, and henceforward he was an ardent advocate of that nation.

Livingston's opposition to England was also partly due to a childhood experience.[33] While he was still a schoolboy at Kingston, on a visit to his Clermont home the family was forced to flee before the advance of the British troops, who fired the home before the fleeing family was out of sight of the house. The rising smoke that came from the burning home made an indelible impression upon the mind of the young boy and he never forgave the British nation for this wanton destruction which its agent had perpetrated. Twenty years later, when delivering a speech in Congress, he referred to this incident, thus indicating that the roots of his active opposition to the English were more deeply fixed than in political expediency.

When Livingston took his seat as a member of the House of Representatives on December 7, 1795, the Republicans, although in the minority, were well represented. Among the leaders were two Virginians, William B. Giles, a former classmate at Nassau Hall, and James Madison. Albert Gallatin, from Pennsylvania, was probably the most important member of the minority group known as the opposition party. Though a member of this party, Livingston's tone in debate was always dignified and moderate, and, in a short time, he gained such weight in the House as is not often attained by so young a member. Seven days after taking his seat, he was appointed a member of the important Committee of Com-

[33] *Kemble Papers* (New York Historical Society *Collections*, New York, 1883–1884), I, 140–41.

merce and Manufactures.[34] On the day following, he presented a motion which provided that a committee be appointed "to inquire and report" concerning mitigation of punishments for certain crimes "for which infamous and capital punishments are now inflicted." [35] This was significant since it indicated quite early his intense interest in penal reform to which at a later date he devoted much of his time and talents.

Livingston was a strict party man and regularly voted with the Republicans on all questions affecting party policies. At that time, it was the custom for the House to frame an address to the President in answer to his speech to Congress delivered at the opening of each session. During the six years that he served in the House from New York, the Presidents were Federalists, and he consistently voted against the addresses as prepared by the congressional committee because he felt that they were too indiscriminating in praise of the Administration. Until 1794, when the Senate ceased to sit in secret session, that chamber exerted little direct influence upon the people. The public interest was entirely in the House, and its members held the positions of real power and influence. Livingston's activities soon brought him into public notice. His reputation, not only for party regularity, but also as a speaker of ready and forceful argumentative ability, spread beyond the borders of his state and the halls of Congress.

In the treaty negotiated with England, Jay had not succeeded in getting the British to abandon their claim to the "right of search" for the purpose of discovering Englishmen on American ships. On February 19, 1796, Livingston requested the appointment of a committee by the House to inquire and report as to the legislative

[34] *Annals of Congress*, 4 Cong., 1 Sess., 143. [35] *Ibid.*, 144.

provisions necessary for the relief of American seamen "impressed into the service of any foreign Power—and also to report a mode of furnishing American seamen with such evidence of their citizenship as . . . [might] protect them from foreign impressment in the future." [36] The resolution, directed primarily at the English, was a popular move. It also furnished its author with an opportunity to strike at Jay and to renew interest in the treaty by directing general attention again to its objectionable features, with the hope that an aroused public opinion might keep Washington from proclaiming it law. On March 1 the House instructed Livingston to prepare a bill providing for the relief and protection of American seamen. The bill was passed by the House on March 28,[37] after it was known that the Senate would act favorably on the Jay Treaty.

President Washington proclaimed the Jay Treaty, and on March 1 he sent a copy of it to each house of Congress. In the House it was referred to the Committee of the Whole and taken up for consideration March 7.[38] Both political parties were aroused for a determined struggle over the legislation necessary to carry out the provisions of the treaty. Livingston and Gallatin led the fight against it and the former at once sprang into the front rank among the Republicans of the North. By this act he called up the only serious conflict of authority between the executive and the legislative that occurred during Washington's Administration. He moved that the President be requested to send to the House copies of the instructions given Jay on his departure for England as minister and of the correspondence had with him during the progress of the negotiations of the treaty,

[36] *Ibid.*, 350. [37] *Ibid.*, 820. [38] *Ibid.*, 424.

"except such of said papers as any pending negotiations" might render improper to disclose.[39]

The struggle was on. Livingston, during his speech in support of his resolution, had intimated that the constitutionality of the treaty might be questioned. Immediately, Uriah Tracy of Connecticut asked if the papers had been called for on the grounds of impeachment. If so, against whom were the impeachment proceedings to be instituted, the negotiator or the President? [40] He requested Livingston to state explicitly his reasons for requesting the papers, and inquired of him if he desired to ascertain whether or not a better treaty might be made. Livingston replied that he might want the information for all the purposes enumerated but at that time he could not determine whether or not an impeachment was advisable without having the necessary information as to the conduct of the officers.[41]

In the interest of peace, Madison offered an amendment excepting "so much of said papers as, in . . . [the President's] judgment, it may not be consistent with the interest of the United States, at this time, to disclose." [42] It was rejected. The Federalists voted against it because they did not approve of any request for papers, and a few Republicans joined with them because they wanted the resolution to be as objectionable as possible to the Administration. The debate lasted for more than a fortnight, and some thirty speeches were made upon the subject. The arguments for and against the Livingston resolution are interesting because the question involved has not yet been definitely settled.

The Federalists said that a bold attempt was being made to encroach upon the prerogatives of the President

[39] *Ibid.*, 426. [40] *Ibid.*, 427. [41] *Ibid.* [42] *Ibid.*, 438.

and the Senate, who were the treaty-making powers. Treaties made by them were "the supreme law of the land," and the House had nothing to do with the question of how they were made. It was the duty of Congress to obey the law and pass such legislation as a treaty required to carry it into execution.

The Republicans held that the Constitution vested in the House certain prerogatives, among them the right to regulate commerce, raise revenues, and make appropriations. The general power of the Executive and Senate to make treaties could not supersede this particular authority. Whenever, therefore, a treaty required congressional action to make it effective, Congress was bound to deliberate before acting and to ask for information to assist its deliberations. The power to make treaties was not claimed, but the power to carry them into effect was insisted upon. The leading advocates of this view were Livingston, Gallatin, Samuel Smith of Maryland, and the Virginia members, Giles, John Nicholas, John Page, and Richard Brent, with Madison to lead them. The other side had Theodore Sedgwick of Massachusetts, William Vans Murray of Maryland, and William Smith and Robert Goodloe Harper of South Carolina. The call for the papers was agreed to March 24 by a vote of sixty-two to thirty-seven. On March 30 the President's reply was received, refusing to comply with the request on the ground that it was an interference with the rights of the treaty-making authorities, which did not require the assent of the House of Representatives.[43]

When the President's message came before the Committee of the Whole, Thomas Blount of North Carolina offered resolutions reaffirming as the sense of the House the arguments already made by the Republicans. On

[43] *Ibid.*, 760–62.

April 6 Madison made a long speech in favor of the resolutions; but no arguments were made on the other side, and the resolutions were passed by a vote of fifty-seven to thirty-five on the following day.[44] On April 15, when the treaty question came up again, Madison held out prospects of obtaining another and better treaty by further negotiations.[45] A week later Joshua Coit of Connecticut sarcastically replied he should "like to see the gentleman from Virginia [Mr. Madison], . . . wrapt in his mantle of doubts and problems, and going on a mission to the Court of London to clear up the business." [46] Rather startling, however, on April 29, was the approval in the Committee of the Whole of the necessary provisions for the execution of the treaty by the deciding vote of Augustus Muhlenberg, the chairman. The next day the House confirmed the action of the committee by a vote of fifty-one to forty-eight.[47]

Apparently, this quick retreat from a position twice affirmed was due to the realization among some of the opponents of the treaty that they were precipitating a political fight with Washington, who had lost in the treaty quarrel little, if any, of his almost unanimous popular support. These opponents sensed that the people had rallied to the cry to "follow where Washington leads" and yielded to the popular reaction. If no principle had been settled, at least a very awkward situation had been relieved.

Whether or not this mistake of the Republicans in pushing the treaty fight too far had any determining influence on the fall elections is not clear, but their membership in the House was greatly reduced at that time. Although Livingston himself escaped defeat,[48] the Liv-

[44] *Ibid.*, 762–82. [45] *Ibid.*, 976–87. [46] *Ibid.*, 1151.
[47] *Ibid.*, 1291. [48] New York *Herald*, January 21, 1797.

ingston-Burr-Clinton combination was unable to deliver New York's twelve electoral votes, and John Adams was elected President by a majority of three votes. The Republicans, however, largely because of Hamilton's activities against Adams, elected Thomas Jefferson vice-president by a majority of nine votes over Thomas Pinckney.

As might be expected, the Federalists, in coming to an understanding with England, had created trouble with France. The French government was disturbed by the rumors of a treaty of amity between the United States and England, but the pro-French James Monroe, whom Washington had sent to Paris in 1794 to replace Gouverneur Morris, assured France that nothing prejudicial to her interests would be accepted in the proposed agreement. Although subject to censure for exceeding instructions, Monroe was not alone at fault. The Secretary of State and the American ministers at London and Madrid were also culpable. The first official information that Monroe received relative to the progress of, or the final results of, Jay's negotiations came with the instructions from the Secretary of State to uphold the treaty. These instructions placed him in an embarrassing position. Monroe not only neglected to defend the Jay Treaty in Paris, but six months later, when he learned that the French ministry was about to send an envoy to America to make a new treaty, induced the ministry to delay their project by holding out to them the prospect of a Republican victory in the coming presidential election. His conduct displeased Washington, who considered the Minister's actions a breach of trust. In the summer of 1796, when the President was informed that Monroe was sending to the Republicans at home information which was used to convince the voters that the Federalist Ad-

ministration was about to plunge the nation into war with France, he ordered the Minister's immediate recall.

Charles C. Pinckney was sent to succeed Monroe at Paris. When he arrived at his post of duty, he found the government in a resentful mood. The French Directory not only informed him that France would not receive an American minister until her grievances were redressed, but two months later officially notified him that he was liable to arrest. This rude reception was thrown into bolder relief by the evidence of good will that the Directory showered upon Monroe when he took his departure about the same time in February, 1797.

The humiliating treatment of Pinckney caused a violent outbreak of feeling in America, and party rancor became worse than ever. The Federalists maintained that the insult to our Minister and the ill-concealed attempts of the French envoy at Philadelphia to direct American politics were convincing evidence that the French government worked in behalf of the Republican party. They wished to suspend relations with France. The Republicans claimed that the triumph of the Jay Treaty showed that British influence was alive in the country. While they could not defend the action of France, they declared that it only indicated the mismanagement of the Federalist party.

As usual, Livingston came to the defense of France. On April 24, during the debate on the Address to the President, he championed her cause and requested that an examination of France's complaints be made. Since she felt herself injured, he was in favor of an amicable discussion of the whole matter. At the same time he maintained that France had justifiable grounds for complaint, since the Jay Treaty had weakened the preferential relations which the treaties of 1778 had given her.

Six days later he again spoke on this question and urged that a conciliatory attitude be assumed toward France. His requests looking toward a peaceful settlement of the question were disregarded by the Federalists, and steps were taken to put the nation in a state of defense.

Meanwhile the French navy had seized American ships, and the United States was on the verge of war. President Adams, hoping to effect a settlement, appointed a special commission composed of Pinckney, John Marshall, and Elbridge Gerry to treat with the French government.[49] The commission arrived in Paris and began to negotiate in October, 1797. The members of the commission were informed both privately and officially that negotiations must remain in abeyance until certain monies were paid to Talleyrand by the Americans. The envoys explained that they were not authorized to offer "a bribe" and then drew up a full statement of the American claims and delivered it to Talleyrand. Two months elapsed before they received a statement of the French contentions. At that time Talleyrand curtly informed the commissioners that he would treat with Gerry alone.

On April 3, 1798, President Adams sent to Congress the correspondence of the American envoys, disclosing the French demands with Talleyrand's threat that in the event of failure to comply steps would be taken immediately to ravage the coast of the United States by French frigates from Santo Domingo.[50] The moderate Federalists now joined the extremists and several acts were passed looking to war.

[49] William O. Lynch, *Fifty Years of Party Warfare* (Indianapolis, 1931), 67–73. Professor Lynch points out that the commission was not bipartisan as Gerry was an Adams Federalist at the time of his appointment.

[50] *Annals of Congress*, 5 Cong., 2 Sess., 1374–75.

The *Aurora* and other Republican newspapers boldly declared it better to pay the money demanded by France than run the risk of war. The precautions deemed necessary by Congress as protection against French invasion excited their violent opposition. Within four weeks, however, Congress by a strict party vote authorized the establishment of a navy, the construction of war vessels, the recapture of American ships unlawfully seized, the purchase of cannon, arms, and military stores, and the raising of a provisional army of ten thousand men, with the acceptance of militia volunteers. The treaties of 1778 were abrogated and the organization of the army was begun.[51]

Livingston not only voted against all of the war measures, but he spoke in opposition to many of them. He consistently maintained that France had just grounds for complaint and that the Federalists were responsible for existing conditions. He denied that there was any danger of invasion and vigorously opposed the granting of discretionary powers to the President. Just four days prior to the publication of the correspondence of the French envoys, which included the letters usually known as the "X Y Z" papers, he introduced a resolution in the House demanding that the President furnish the House with the instructions given the envoys to France and all the information pertaining to the negotiations. On July 2 he presented a resolution requesting the House to demand of the President that he instruct Gerry, who had remained in Paris, to continue with the negotiations with the French Minister of Foreign Relations.[52] Livingston felt that there was no impropriety in this request since it was probable that a treaty might be completed which the United States might honorably ac-

[51] *Ibid.*, 1412, 1554, 2127, 2132. [52] *Ibid.*, 2083.

cept. As the French Minister had indicated a willingness to treat with Gerry, he thought that it would be proper for the House to express a wish of this nature. Livingston's resolutions were defeated by a vote of fifty-one to thirty,[53] for the general sentiment was that the United States had already gone too far in its efforts to conciliate France.

The wise and resolute policy of the government in its preparation for war with France was counteracted by its policy of internal defense. President Adams, like the rest of the Federalists, wished to enforce respect for public officials and resented the vast amount of abuse that came from the Republican editors and writers. Many of these men were of foreign birth, some of them fugitives from their own countries, but they were Republicans; therefore, he argued that they ought to be restrained. It was charged that many of them were spies, and on that basis it was easy to conclude that they should be sent out of the country. Carried away by their hatred for France, the Federalists sought to put a stop to the interference of a foreign power in the internal regulations and policy of the government, and also to check the abuse of the liberty of speech and of the press, by the measures known as the Naturalization, Alien, and Sedition Acts.

Livingston, having been absent from the House during the debates on the Naturalization Act, returned to his seat on the eve of the passage of the Alien bill. His opposition to the Jay Treaty had earned for him a standing among the Republicans of the North, and now he achieved national fame by the conspicuous eloquence and vigor of his opposition to the Alien and Sedition Acts. On June 21, in opposing the enactment of the Alien bill, he delivered what probably was the greatest

[53] *Ibid.*, 2086–87.

speech of his career as Representative from New York, and definitely established his reputation as a fearless political leader, a scholar, and a jurist.

After stating that he believed the act to be "in direct violation of the Constitution, and marked with every characteristic of the most odious despotism," Livingston attacked the proponents of the bill for this contemplated assumption of undelegated power by the general government. He said that the provisions of the bill were not only unauthorized by the Constitution, but that they were in direct violation of its fundamental principles and contradictory to its "most express prohibitions." The act was unauthorized by the Constitution since it empowered the President alone to make, construe, and apply the law. Such a union of the legislative, executive, and judicial powers was despotism, as it contravened the constitutional principle of distribution of these powers in separate hands. The act was not only in conflict with the fundamental principles of government, but also violated several express prohibitions of the Constitution. Refuting the claim that the word *persons* as used in Section 9 of Article I of the Constitution related only to slaves, Livingston maintained that since Congress could not prevent the arrival of aliens prior to 1808, it had no power to send them away. Article II provided that the judicial powers should be vested in the "Supreme and Inferior Courts" and that the "trial of all crimes shall be by jury, except in case of impeachment." In the seventh and eighth amendments this provision was repeated and enforced by others. There was not a minute article in these several provisions of the Constitution, he continued, that was not violated in the bill. There was no indictment, no jury, no trial, no public procedure, no statement of accusation, no examination

of witnesses in support of the accused, and no counsel for the defense. Having thus traced the long step that would be made toward despotism by the enactment of this law so manifestly violating the Constitution, he openly predicted a resistance of the people. He even encouraged resistance to constituted authority by declaring that such resistance would be right and proper. The bill passed the House, however, by a vote of forty-six to forty.[54]

In spite of its radical spirit, the speech was well received by the public. Livingston's open declaration of war upon the government was followed by a still more active newspaper campaign. The epithets "liar," "scoundrel," "villain," and the charges of treason and despotism were exchanged by the editors without the least ceremony. Some of the Republican printers attempted to incite an insurrection while the bill was under consideration in the Senate. On June 29 the *Aurora* asserted that "the period is now at hand when it will be difficult to determine whether there is more safety to be enjoyed at Constantinople or Philadelphia." Again on July 3 it asked: "Where a law shall have been passed in violation of the Constitution, making it criminal to expose the crimes, the official vices or abuses, or the attempts of men in power to usurp a despotic authority, is there any alternative between abandonment of the Constitution and resistance?" [55]

While the newspapers were attacking the government, statesmen, citizens, and each other, the Federalists proceeded with their plans of defense. On July 5 the Senate Sedition bill was received in the House. When it came up for consideration, Livingston moved its rejection

[54] *Ibid.*, 2006–15, 2028.

[55] Philadelphia *Aurora*, June 29, July 3, 1789.

without a second reading.[56] In criticizing this action of Livingston, John Allen of Connecticut said he hoped the bill would not be rejected, for there was a dangerous combination, hostile to free government and genuine liberty, that was attempting to overturn the government. The combination was extensive and included characters whose stations demanded a different course. The gentleman who had called upon the President to instruct Gerry to conclude a treaty with the French government, who predicted that the people would resist the government, and who now called upon the House to reject this bill was responsible for the conspiracy. Certain newspapers that reflected Livingston's sentiments had stated that the people ought to raise an insurrection against the government. "The gentleman (Mr. Livingston) makes his proclamation of war on the Government in the House on Monday, and this infamous printer (Bache) follows it up with the tocsin of insurrection on Tuesday." This same Benjamin Franklin Bache in another issue of the *Aurora,* he continued, directed an article to the "Irish Emigrants" wherein he endeavored to persuade them that they should not only refrain from defending this country against invasion but should join the enemy, since the French were "seeking the relief of their countrymen in Ireland." "This paper (the *Aurora*) is the great engine of all these treasonable combinations, and must be strongly supported, or it would have fallen long ago." The gentleman from New York, so Allen maintained, had attempted to conceal these approaches to revolution and Jacobinic domination by his contentions for liberty of opinions and freedom of the press.[57]

Livingston used the same arguments in opposing the

[56] *Annals of Congress,* 5 Cong., 2 Sess., 2093. [57] *Ibid.,* 2093–2100.

bill against seditious practices that he had advanced in his speech against the Alien Act. On July 5 he said: "[The bill under consideration] is not only an abridgment of liberty of the press, which the Constitution has said shall not be abridged; but it is a total annihilation of the press." Nor could he see how acts made contrary to the Constitution could be binding upon the people, "unless gentlemen say Congress may act in contravention to the Constitution." In reply to a question by Harrison Gray Otis of Massachusetts, he said that the judges of an infraction of the Constitution were to be the people of the United States.[58] Again on July 10 he argued that the bill embodied a principle which would lead to the destruction of state authorities and make the Constitution mean anything or nothing. He viewed the bill as a link in a chain of events leading by steps of progressing tyranny to a change in the government. And to prove that the government was rapidly advancing to a despotism, he quoted from President Adams's "Defense of the American Constitution." [59]

The protests of the press, the warnings of the Republicans, and the eloquence of Livingston were of no avail. Having decided to still the abuse of the press, to rid the country of undesirable aliens, and to quiet the revolutionary activities of the Republicans, the Federalists carried through their program. On May 21 the House, by a vote of forty-seven to thirty-one, approved the Naturalization bill. One month later, June 21, the vote in favor of the Alien Act was forty-six to forty. Five days later, June 26, fifty-two votes were cast for the Alien Enemies bill and on July 10 the House, by a close vote of forty-four to forty-one, passed the Sedition Act.[60]

[58] *Ibid.*, 2104–2105.
[59] *Ibid.*, 2152–56.
[60] *Ibid.*, 1783, 2028, 2049, 2171.

Livingston continued to champion the cause of France. During the third session of the Fifth Congress he made several futile attempts to secure the repeal of the Alien and Sedition laws. He opposed the bill on commercial intercourse with France because it would encourage revolts against France in the French dominions. The United States had no more right, he asserted, to negotiate with the several French dependencies than a foreign government had to negotiate with the separate departments of this government. On the last evening of the session he strenuously opposed the passage of the "Law of Retaliation." He maintained that the bill granted the President too great a discretionary power, and he reminded the proponents of the measure that the act was as applicable to Englishmen as to Frenchmen in this country. The majority ignored his protests, just as they had ignored them during all of the sessions of this Fifth Congress.[61]

Livingston's official actions in behalf of the French were not confined to political matters. Not only was he interested in the welfare of those persons who had assisted the colonies in their struggle for freedom, but also in the members of their families. He never let pass an opportunity to render them all possible aid or service. Upon hearing that General Lafayette's son was in the United States, he requested the House in March, 1796, to appoint a committee to inquire "whether any, and what, provisions may be necessary for his support." The request was granted and William Vans Murray of Maryland and John Sherburne of New Hampshire were placed upon the committee with Livingston.[62] In reporting for the committee on April 26, Livingston informed the House that young Lafayette "had received the pa-

[61] *Ibid.*, 5 Cong., 3 Sess., 3045. [62] *Ibid.*, 4 Cong., 1 Sess., 423, 798.

tronage of the President of the United States" and needed no pecuniary assistance.[63] In March, 1797, by resolution, he requested the President to interpose in behalf of General Lafayette, who then was at Olmutz. In December of the same year he presented to the House a petition from the four orphaned daughters of Count de Grasse requesting financial aid until such time as they could secure "possession of their patrimony" in Santo Domingo. Over the opposition of Coit, Livingston had the request referred to a select committee of five members, which reported favorably upon the request and recommended the granting of annuities of $500 each for a period of five years. Bradley Varnum, John Williams, and Nathaniel Macon opposed the amount of the grant and by a vote of forty-six to thirty-four [64] Livingston, George Thatcher, David Brooks, and James A. Bayard were forced to accept a reduction in the annuity to $400 for each daughter.

In February, 1800, an opportunity was afforded Livingston to attack the Jay Treaty again and at the same time to question the action of President Adams in the case of Jonathan Robbins. Robbins had committed murder on board a British frigate while on the high seas and had escaped to this country. He claimed to be a citizen of the United States and to have been impressed on board the British ship of war. He was arrested and committed for trial in the Federal Court for the District of South Carolina. Subsequent to the commitment, the British minister at Washington made requisition on the President of the United States for the delivery of Robbins as a fugitive under the provisions of Article XXVII of the Jay Treaty. President Adams advised and re-

[63] *Ibid.*, 1202.

[64] *Ibid.*, 5 Cong., 1 Sess., 763, 775–76, 790–95, 807–809.

quested the judge who had committed Robbins for trial to deliver the prisoner to the British agent as he "considered an offense committed on board a public ship of war on the high seas, to have been committed within the jurisdiction of the nation to whom the ship belongs." The judge complied with the President's request. Robbins was surrendered to the British agent, tried by an English court, convicted, and executed.

In his resolutions of February 4 Livingston criticized the President for his actions in the case and requested that the Executive furnish the House with copies of all correspondence pertaining to the incident. These resolutions were responsible for a series of debates that lasted until March 10, during which period Livingston spoke at least ten times. He maintained that the questions involved in the case were matters of judicial inquiry. The judiciary was sole judge of the exercise of its functions in the case of an extradition when the individual in question was in its custody. The decision of those questions by the President, he charged, was a dangerous interference of the Executive in judicial matters. The compliance of the judge with the Executive's suggestions in this instance, Livingston pointed out, was a sacrifice of the judiciary's independence and exposed the court to suspicion and reproach.[65]

During the debates which the Livingston resolutions provoked, a new member of the House attained national prominence by his vigorous defense of the President's actions. John Marshall of Virginia took his seat at the opening of the first session of the Sixth Congress, December 2, 1799, and immediately became the Administration leader in the House. On March 7 Marshall displayed his great powers of exhaustive analysis, terse state-

[65] *Ibid.*, 6 Cong., 1 Sess., 511–12, 532, 584–85.

ment, and logical reasoning in vindicating the President. His arguments were based upon the constitutional provisions concerning executive authority. He maintained that the question was one for executive rather than judicial decision. The President was not chargeable with an interference with judicial decisions and it was not an assertion of the right to impress American sailors.[66] A majority of the House agreed with Marshall and rejected Livingston's resolution by a vote of sixty-two to thirty-five.[67]

Although defeated in his only legislative encounter with this worthy adversary, Livingston had no cause for chagrin. Marshall's speech in defense of the Administration is one of the best ever delivered in Congress and his opponents claimed that it was in recognition of this defense that Adams a few weeks later called him to the cabinet post of secretary of state.[68] Livingston's maneuver was but a part of the Republican strategy to discredit the Adams Administration and, as such, Marshall's success in this skirmish of the presidential battle that continued into the fall proved to be a Pyrrhic victory. Livingston accomplished his purpose of reviving the objectionable Jay Treaty and making it appear that Adams was subservient to the British.

[66] *Ibid.*, 596–618. [67] *Ibid.*, 621.
[68] Henry Adams, *Life of Albert Gallatin* (Philadelphia, 1879), 232.

Chapter IV

ELECTION OF JEFFERSON AS PRESIDENT

WHILE not fully apparent at the end of the century, certain events indicated that the period of Federalist supremacy in national politics was rapidly drawing to a close. The congressional elections of 1798 had come when the country still looked for war with France, and the results had favored the Federalists. But that party was still divided into moderates and extremists. The split became more evident when Adams, in 1800, reorganized his cabinet. He placed Marshall, who had become unpopular in the North as the result of his opposition to the Alien and Sedition Acts, in Timothy Pickering's post as secretary of state, and called Samuel Dexter to James McHenry's position as secretary of war. In March, 1800, Congress ordered the dismissal of the new army, which pleased the moderates and at the same time dealt a blow to the extreme Federalists. As it was evident that the Federalists would take Adams for their presidential candidate, this dissension augured ill for party success. Despite a more or less secret campaign against the President on the part of the irreconcilables, a caucus of Federalist members of Congress in May, 1800, agreed to support Adams and Charles C. Pinckney. The caucus action failed to bring peace and the discontented element of the party opposed Adams more vigorously.

Meanwhile, the Republicans were united for Jefferson. The Virginia and Kentucky resolutions gave them a strong principle on which to appeal to the voters, and they strengthened their position by criticizing the Administration at every possible point. The Republicans, however, had their own internal jealousies. Virginia expected to carry most of the South for Jefferson, but she needed the support of a strong northern state, for which purpose New York seemed best fitted. Clinton did not like the Virginia leadership, yet at this time he was held in check in New York by Burr and the Livingstons. Burr, who felt that he had been badly treated in 1796, demanded assurances from the party leaders that he would be supported equally with Jefferson. His terms were accepted; and the fight for the control of the state legislature, which selected the presidential electors, was begun immediately.

The political situation in New York did not seem particularly favorable for a Republican victory. The proceedings of Genêt, the excesses of the French Revolutionists, and finally the contemptuous treatment of the American envoys by Talleyrand and his effort to extract a bribe from them combined to drive many men out of the Republican party. The leadership of the Livingstons had been seriously challenged, and temporarily their political fortunes were at low tide. Although Edward Livingston had been re-elected to Congress in 1798, his majority was reduced from 550 in 1797[1] to 175 votes.[2] The same year, while the agitation for war was at its height, Robert R. Livingston had unwisely accepted the Republican nomination for governor. It is

[1] New York *Herald,* January 21, 1797.

[2] New York *Weekly Museum,* June 16, 1798. New York elections in this period were held irregularly.

significant of existing conditions that the party had failed to nominate a candidate for lieutenant governor on the ticket with him. Jay was re-elected governor by an increased majority,[3] and the Federalists retained control of the state.

But a reaction against Federalist excesses had begun. The Republicans contended that the President, by his actions in the Robbins case, had admitted the right of foreign nations to impress American sailors. The action of the House in sustaining the President was viewed as a complete surrender to England on this point, arousing great feeling against England, and reacting against the party which had usually stood by that country. As the Republicans had predicted when the Alien and Sedition Acts were passed, there was a deep resentment on the part of the public toward the Federalists, and a demand for the repeal of these laws. Persons convicted under the Sedition Act became martyrs to free speech in the eyes of the Republicans. The repeal of this act became an important issue in the election of 1800 and had great weight in convincing the voters that the Federalists were drunk with power. Perhaps in no other state was this issue used to better advantage than in New York. A certain Jedediah Peck of Cooperstown, who circulated a petition to Congress for the repeal of the Alien and Sedition Acts,[4] was arrested and carried to New York for trial in the spring of 1800. It is approximately two hundred

[3] *Ibid.* The tabulation gave Jay 16,012 and Robert R. Livingston 13,634 votes. The New York *Spectator,* June 9, 1798, stated, "We congratulate the friends of the Federal interest on the re-election of Honorable John Jay to the office of governor by 2,380 votes majority, which proves that federalism, since the former election, has gradually extended its influence." See also, Alexander, *Political History of the State of New York,* I, 82.

[4] Jedediah Peck, *The Political Wars of Otsego or Downfall of Jacobinism and Despotism* (Otsego, 1796), *passim.*

miles from Cooperstown to New York, and it required five days for the marshal and his prisoner to make the trip. "The newspapers reported Peck as 'taken from his bed at midnight, manacled, and dragged from his home,' because he dared ask his neighbours to petition Congress to repeal an offensive law." The state had not been so aroused since Revolutionary days.[5] "A hundred missionaries in the cause of democracy, stationed between New-York and Cooperstown," says J. D. Hammond, "could not have done so much for the republican cause as this journey of Judge Peck, as a prisoner, from Otsego to the capital of the state. It was nothing less than the public exhibition of a suffering martyr for the freedom of speech and the press, and the right of petitioning." [6]

Under existing conditions Edward Livingston decided not to seek re-election in 1800 but to devote his efforts toward carrying New York for the Republican ticket. He was on friendly terms with Jefferson, and Burr was his intimate personal and political friend. Therefore, a Republican victory in New York would offer him opportunities for political preferment that were more certain of realization than was his return to Congress. Adams had secured the electoral votes of the state in 1796, but the strength of the two parties was now nearly equal and the result of the presidential election might hinge upon the results of the election of the members of the legislature.

Such was the political situation in the spring of 1800, when Aaron Burr undertook to gain for the Republicans the twelve New York electoral votes by winning a majority of the state legislature. Seventy electoral votes

[5] Alexander, *Political History of the State of New York*, I, 89.

[6] Hammond, *History of Political Parties in the State of New York*, I, 132.

were necessary to elect a president, and outside of New York the Republicans could count sixty-one. Burr selected a ticket "that would commend itself to all" and initiated an organization that "would do credit to the management of the later-day chiefs of Tammany." To arrest the incipient rivalry between the Clinton and Livingston factions, George Clinton and Brockholst Livingston "headed the ticket." Burr stood for the county of Orange, and other candidates for the state legislature equally acceptable to the two factions were selected.[7] When the polls closed on May 2 the Republicans had carried the legislature by a majority of nineteen on a joint ballot.[8] The value of the Livingston influence was apparent as the Republicans made a clean sweep in New York City by electing all of the thirteen senators and representatives to be chosen.

Because of the mutual dislike of Hamilton and Adams, Hamilton attempted to throw Adams behind Pinckney in the electoral vote by resorting to the old "double chance" maneuver of 1796 when Thomas Pinckney was Hamilton's choice for president. Adams learned of the move and opened fire upon the "Essex Junto," calling them a British faction. Between Adams and Jefferson, Hamilton now preferred the latter. "I will never more be responsible for him by my direct support," he wrote in May, 1800, "even though the consequence should be the election of *Jefferson.*"[9] In a word, all of the quarrels, resentments, and antagonisms that had torn and rent the party for four years became public information with the departure of Washington

[7] *Ibid.*, 90.

[8] New York *Weekly Museum*, May 17, 1800; Matthew L. Davis, *Memoirs of Aaron Burr* (New York, 1855), II, 66–67.

[9] Hamilton to Theodore Sedgwick, May 10, 1800, in Hamilton (ed.), *Works of Alexander Hamilton*, VI, 441.

from the Capitol. The party, already practically defeated by its Alien and Sedition legislation, was making defeat inevitable with internal strife.

In the Republican ranks there was the mutual distrust of Burr and Jefferson. The results of the 1796 election were sufficient justification for Burr's insistence that he should not be deprived of a single Republican vote anywhere. His uneasiness "lest the Southern States should not be true to their duty" moved Madison to action. To James Monroe he wrote that he personally should guard against any "occasion for it" by taking the proper measures to ensure that there would be no "division of the Republican votes." He was confident that Monroe was fully apprised of the intendant "mischief resulting from the least ground of reproach, and particularly to Virginia" should "one of the Republican Candidates" be defeated.[10] In addition, Madison informed Jefferson of Burr's anxiety and expressed the hope that the results would protect Virginia, particularly "from any imputation on this subject," yet he was not "without fears that the requisite concert may not sufficiently pervade in the several States." [11]

Jefferson ignored Madison's warning, and, according to his own statement, made no effort to dissuade his followers from their contemplated plan of withholding votes from Burr in South Carolina, Tennessee, and Georgia. He knew that such procedure might result in electing Adams vice-president, as evidenced by his statement to Burr following the November election that he had determined to appoint the New Yorker to an im-

[10] Madison to James Monroe, ?, 1800, in *Letters and Other Writings of James Madison* (Cong. ed., Philadelphia, 1865), II, 160.

[11] *Id.* to Jefferson, October 21, 1800, *ibid.*, 162; Hunt (ed.), *Writings of James Madison*, VI, 409–10.

portant post had he been defeated. When it became apparent that Jefferson and Burr had probably received the same number of votes, Jefferson, in an attempt to disarm his running mate of any suspicion of complicity upon his part, lamented that the plans had been "badly managed not to have arranged with certainty what seems to have been left to hazard." Unconsciously, his fears were voiced when he continued, "It was the more material, because I understand several high-flying federalists have expressed their hope that the two republican tickets may be equal, and their determination in that case to prevent a choice by the House of Representatives, (which they are strong enough to do,) and let the government devolve on a President of the Senate." [12]

Although Jefferson refused to exercise his influence in Burr's behalf, the doubtful state of South Carolina cast its electoral votes unanimously for Jefferson and Burr just as did the other Republican states. The party of Jefferson was successful at the polls as the final results of the election showed that its candidates had each seventy-three electoral votes, Adams sixty-five votes, Pinckney sixty-four votes, and Jay one vote.

The Federalists, although feeling that the Republican victory spelled disaster, were determined that Jefferson should not become president; but they were divided as to the course of action to pursue. In New England secession was openly advocated as the alternative to the domination of the country by Virginia and her southern allies. Elsewhere, certain Federalists "proposed to prevent any election, and thereby throw the government into the hands of a President of the Senate" and "even went so far as to cast about for the person."

[12] Jefferson to Burr, December 15, 1800, in A. A. Lipscomb (ed.), *The Writings of Thomas Jefferson* (Washington, 1903), X, 180–82.

Neither of these two plans received general support, but the plan of voting Burr into the presidency as the lesser of the two evils appealed to many of the Federalists.[13] As early as August, 1800, George Cabot informed Hamilton that "the question has been asked whether if the federalists cannot carry their first points, they would not do well to turn the election from Jefferson to Burr?" [14]

Soon after the presidential electors of the several states began casting their votes, it was known that Jefferson and Burr had run evenly, and by the middle of December, 1800, it was rumored that their vote was a tie. "It is highly probable that I shall have an equal number of votes with Mr. Jefferson," Burr wrote, under date of December 16, 1800, to Samuel Smith, Republican representative from Maryland; "but," he continued, "every man who knows me ought to know that I would utterly disclaim all competition. Be assured that *the federal party can entertain no wish for such an exchange.* As to my friends, they would dishonour my views and insult my feelings by a suspicion that I would submit to be instrumental in counteracting the wishes and expectations of the United States." And he then appointed Smith his *"proxy to declare these sentiments* if the occasion should require." [15]

When it was known in Washington that the electors from Tennessee, the last to register a choice, had voted regularly, there was much speculation as to the outcome of a House election, since the House must vote by states when choosing a president. In 1801 there were sixteen states in the Union; consequently nine were necessary

[13] Gouverneur Morris to Hamilton, December 19, 1800, in Hamilton (ed.), *Works of Alexander Hamilton,* VI, 492–94.

[14] George Cabot to *id.,* August 10, 1800, *ibid.,* 453–55.

[15] Davis, *Memoirs of Aaron Burr,* II, 75; Parton, *Life and Times of Aaron Burr,* 266–67.

to a choice. Although the Federalists had a majority in the House during the 1800–1801 session, they were unable to control nine states. The representatives of some states were equally divided in party affiliation. In other states the stronger side had a majority of only one, and great power was therefore lodged in the hands of certain individuals. Such conditions, naturally, were favorable to intrigue and bargaining.

Whether or not Burr was sincere in his letter to Smith was immaterial to those Federalists who were determined to disregard the will of the Republicans of the country. To elect Burr "would be to cover the opposition with *chagrin,* and to sow among them the seeds of morbid division," so Harrison Gray Otis suggested to Hamilton.[16] James A. Bayard of Delaware informed Hamilton that "there appears to be a strong inclination in a majority of the federal party to support Mr. Burr." [17] Gradually this sentiment took possession of the New England and middle states until it seemed the prevailing opinion of the Federalist party.

Hamilton, the head of an important faction in the Federalist party, was opposed to this plan. He not only distrusted Burr more than he did Jefferson, but he believed that the Federalists should leave the selection to the Republicans and thus in no wise be responsible for the new Administration.[18] To Morris, Cabot, Otis, Bayard, Oliver Wolcott, John Rutledge, Theodore Sedgwick, to practically every Federalist in Congress, to every Federalist leader went letters from Hamilton op-

[16] Harrison Gray Otis to Hamilton, December 17, 1800, in Hamilton (ed.), *Works of Alexander Hamilton,* VI, 490–91; Parton, *Life and Times of Aaron Burr,* 267.

[17] James A. Bayard to Hamilton, January 7, 1801, in Hamilton (ed.), *Works of Alexander Hamilton,* VI, 505–507.

[18] Hamilton to Bayard, December 27, 1800, *ibid.,* 499–501.

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Tulsa, Oklahoma

posing the plan to elect Burr.[19] Hamilton went so far as to tell Robert Troup that "if the federal party play so dangerous a game as to support Burr, and he should succeed in the consequence of it," he would "withdraw from the party and from all public concerns." [20] Several prominent Federalists in the House listened to Hamilton, but the rank and file of the party, resentful of defeat, eager for revenge, and not forgetful of Hamilton's campaign indiscretions, were in no temper to follow his advice.

"Dismay and gloom" literally pervaded the Republican ranks.[21] At first, Jefferson feared that the Federalists had planned to prevent an election altogether and so continue in power through the medium of a president of the Senate [22] "till next December," or to have "the legislature take the nomination of the Executive entirely from the people." [23] The Federalist leaders soon realized, as did Gallatin, that "such a plan if adopted would be considered as an act of usurpation, and would accordingly be resisted by the people," [24] and abandoned it. Their next move was no more reassuring to Jefferson, for, at the Federalist caucus which was held in the early days of January, 1801, it was decided by a large majority that the party should support Burr.[25] Jefferson was further disturbed by the unavoidable delay of his

[19] See *ibid.*, 483–522.

[20] Troup to Rufus King, December 31, 1800, in Charles R. King, *Life and Correspondence of Rufus King* (New York, 1894), III, 358–59.

[21] Jefferson to Madison, December 19, 1800, in Lipscomb (ed.), *Writings of Thomas Jefferson,* X, 184–86.

[22] *Ibid.*

[23] Jefferson to Tenche Coxe, December 31, 1800, *ibid.*, 187–88.

[24] Gallatin to Mrs. Gallatin, January 15, 1801, in Adams, *Life of Albert Gallatin,* 252–55.

[25] Bayard to Hamilton, January 7, 1801, in Hamilton (ed.), *Works of Alexander Hamilton,* VI, 505–507.

chief strategist, Gallatin, who did not take his seat until January 12, 1801. Immediately upon arrival, however, the Pennsylvanian began to work, checking on every member of the House and preparing for any contingency. Before the balloting in Congress began, it was the consensus that "the election would finally be determined" by New York, New Jersey, and Maryland,[26] with the probable addition of Vermont.

Jefferson, who had never trusted Burr,[27] attempted to bring him to a distinct understanding. Burr was at Albany attending to his duties as a member of the legislature removed from the center of intrigue, seemingly not involved in the bargaining and maneuvering for positions of vantage. He not only kept silent but also mysteriously aloof from affairs in Washington and his actions were at least enigmatical, if not Machiavellian. His only published utterance on the subject, except the letter to Samuel Smith, was in a family note of January 15 to his son-in-law, Joseph Alston of South Carolina, in which he spoke of the tie as exciting great speculation and much anxiety, adding, "I believe that all will be well and that Jefferson will be our President." [28] Notwithstanding Burr's letter to Smith, Senator Morris might well have had Jefferson in mind when he reported to Hamilton that "some who pretend to know his [Burr's] views think he will bargain with the federalists." [29] Neither did Gallatin's opinion that Burr "has

[26] Davis, *Memoirs of Aaron Burr*, II, 78.

[27] "The Anas," January 26, 1804, in Lipscomb (ed.), *Writings of Thomas Jefferson*, I, 447–48. Adams, *History of the United States*, I, 229, states, "Jefferson himself recorded that he considered Burr for sale between 1790 and 1800."

[28] Burr to Joseph Alston, January 15, 1801, in Davis, *Memoirs of Aaron Burr*, II, 144; Parton, *Life and Times of Aaron Burr*, 279.

[29] Morris to Hamilton, December 19, 1800, in Hamilton (ed.), *Works of Alexander Hamilton*, VI, 492–94.

sincerely opposed the [Federalist] design and will go *any lengths* to prevent its execution," [30] satisfy Jefferson any more than did Burr's letter of January 16 [31] to Gallatin convince him of Burr's sincerity.

As Jefferson had not been frank with Burr, it did not occur to him that the gentleman at Albany could be frank with him. Naturally suspicious, the Vice-President gave credence to current rumors of intrigue. Significance was attached to the report that Robert Goodloe Harper had written Burr a seemingly incriminating letter, and he was quite concerned when he heard that Matthew Lyon of Vermont had been approached by the Rhode Island Federalist, John Brown, to ascertain "What is it you want Colonel Lyon? Is it office, is it money? Only say what you want, and you shall have it." [32] It was quite disturbing to Jefferson to hear that "to Dr. Linn of New Jersey, they have offered the government of New Jersey." [33] When his friend, General James Armstrong, relayed to him Morris's inquiry of the General, "How comes it . . . that Burr who is four hundred miles off (at Albany) has agents here at work with great activity?" [34] Jefferson could not but feel that the Federalists had enlisted Burr in their fight against him.

It was evident to Jefferson that Burr was as well informed as he of the current rumors, among which were those designed to prejudice his running mate against him. Alarmed at the possible reaction to such rumors, Jefferson, on February 1, 1801, made his last written ef-

[30] Gallatin to Mrs. Gallatin, January 15, 1801, in Adams, *Life of Albert Gallatin*, 252–55.

[31] Burr to Gallatin, January 16, 1801, *ibid.*, 245.

[32] "The Anas," December 31, 1803, in Lipscomb (ed.), *Writings of Thomas Jefferson*, I, 442.

[33] *Ibid.*, 440.

[34] *Ibid.*

fort to hold Burr in line. "It was to be expected," he wrote, "that the enemy would endeavor to sow tares between us, that they might divide us and our friends. Every consideration satisfies me you will be on your guard against this, as I assure you that I am strongly. I hear of one stratagem so imposing and so base that it is proper I should notice it to you. Mr. Munford, who is here, says he saw at New York before he left it, an original letter of mine to Judge Breckenridge, in which are sentiments injurious to you. He knows my handwriting, and did not doubt that to be genuine." But, he continued, "the letter seen by Mr. Munford must be a forgery; and if it contains a sentiment unfriendly or disrespectful to you, I affirm it solemnly to be a forgery." Subtly, he concluded, "A mutual knowledge of each other furnishes us with the best test of the contrivances which will be practised by the enemies of both." [35]

Burr was aware that Jefferson was worried and realized that his own interest was fraught with danger by the complicated conditions in New York. There was no reason, Burr evidently concluded, why he should relieve the anxiety of the Vice-President and he cannily delayed answering the letter until February 12, the day after the great contest in the House began. If Burr had heard of the alleged forgery, he avoided giving Jefferson the satisfaction of admitting it, and, at the same time, ingeniously censured him for giving credence to rumors. "It was so obvious," he informed Jefferson, "that the most malignant spirit of slander and intrigue would be busy that, without any inquiry, I set down as calumny every tale calculated to disturb our harmony. My friends are often more irritable and credulous; fortunately I am the depositary of all their cares and anxieties; and I invariably

[35] Jefferson to Burr, February 1, 1801, *ibid.*, X, 193–94.

pronounce to be a lie, every thing which ought not to be true—my former letter should have assured you of all this. . . . Montfort [*sic*] never told me what you relate & if he had, it would have made no impression on me." [36]

Because the Clintons and Livingstons had acted in harmony with Burr in 1800, Hamilton and his friends were positive that Edward Livingston was Burr's "confidential friend," who at the proper time would throw his support to Burr. New York had ten representatives in the House and its vote would be decided by Edward Livingston and Theodorus Bailey of Dutchess County, another friend of Burr's.[37] William P. Van Ness, who accompanied Burr to Albany as a favorite companion, wrote Livingston advising him it "was the prevailing wish of the republicans at Albany" that "after the first or second ballot in the house, to abandon Mr. Jefferson and vote for Mr. Burr." [38] Burr could not have been uninformed as to this and other similar letters; but it was a part of the game, since Burr, so Hamilton wrote to Morris, "perfectly understands himself with Edward Livingston, who will be his *agent* at the seat of government." And Burr had volunteered the further informa-

[36] Burr to Jefferson, February 12, 1801, in Nathan Schachner, *Aaron Burr* (New York, 1937), opposite p. 189.

[37] *Ibid.*, 173; Adams, *History of the United States*, I, 296.

[38] [William P. Van Ness], *An Examination of the Various Charges Exhibited Against Aaron Burr, Esq., Vice President of the United States; and a Development of the Characters and Views of His Political Opponents, By Aristides* (New York, 1803), 95. "Dr. Linn and the Reverend Mr. Abeel of this city told me, in a conversation I had with them, that they *believed* Aaron Burr had *corresponded* with federal members of Congress to get himself elected president of the United States, and that he had agreed to come to their measures." *Ibid.*, 83. "If therefore, Mr. Livingston had been duly impressed with the rectitude of his views and intentions he would have been perfectly justifiable in transferring his vote from Mr. Jefferson to Mr. Burr, and Mr. Van Ness in urging the measure." *Ibid.*, 97.

tion, Hamilton continued, "that the federalists, relying upon this, might further proceed in the certainty that, upon a second ballot, New York and Tennessee would join him." [39] Credence was given to this report because, in January, 1801, Edward Livingston had "declared among his friends that his first ballot" would "be for Jefferson—his second for Burr." [40]

There is no doubt that Burr believed that Bailey [41] and Livingston [42] were his friends, and, if he were intriguing for the presidency, that he expected them to change their votes from Jefferson to himself after the first few ballots. A change in the alignment of either would nullify the vote of New York and acting in unison the two could determine the decision of the New York delegation. However, Burr did not know that Bailey was "soon to be made postmaster of New York," [43] and that Jefferson had offered the position of secretary of the navy to Robert R. Livingston.[44] Nor was Burr informed that as the result "of an alarm which Hamilton gave the Chancellor," the latter had written "a very peremptory letter to his brother," which probably prevented Edward from throwing New York to Burr during the House con-

[39] Hamilton to Morris, January –, 1801, in Hamilton (ed.), *Works of Alexander Hamilton,* VI, 520. For contradictory statements, see [Van Ness], *An Examination of the Various Charges Exhibited Against Aaron Burr,* 81–82, 86–87.

[40] Hamilton to Morris, January 9, 1801, in Hamilton (ed.), *Works of Alexander Hamilton,* VI, 508; Henry S. Randall, *Life of Thomas Jefferson* (Philadelphia, 1858), II, 586.

[41] Adams, *History of the United States,* I, 296.

[42] *Ibid.,* 230. "Should Mr. Burr's *confidential friend* [Edward Livingston] *ever become dangerous, we will show what he has been and what he is.*" *American Citizen,* quoted in Davis, *Memoirs of Aaron Burr,* II, 79 n.

[43] Adams, *History of the United States,* I, 296.

[44] Jefferson to Robert R. Livingston, December 14, 1800, in Lipscomb (ed.), *Writings of Thomas Jefferson,* X, 179.

test.[45] That Livingston occupied a strategic position was generally understood; for had New York gone to Burr, defections which would have been disastrous to Jefferson might have occurred in the personnel of the other states. According to Bayard, "Livingston's means were not limited to his own state; nay I always considered more than the vote of New York within his power." [46] Consequently, if there had been an understanding between Burr and Livingston, Troup was probably correct when he wrote to King that "if Livingston had not betrayed his trust, Burr would certainly have been President." [47] But, the political favors so soon thereafter bestowed upon Edward Livingston may indicate that forces other than the Chancellor were at work.[48] Edward Livingston, while remaining on friendly terms with Burr, nevertheless filled Jefferson's diary with the doings of those who were interested in Burr's election.[49] After determining on his course of action, however, Livingston never wavered in his support of Jefferson.

The great contest began on February 11; and, when the votes of the first ballot were counted, it was found, as Livingston wrote to his brother-in-law, Thomas Til-

[45] Troup to King, May 27, 1801, in King, *Life and Correspondence of Rufus King*, III, 460.

[46] *Annals of Congress*, 7 Cong., 1 Sess., 640–41.

[47] Troup to King, May 27, 1801, in King, *Life and Correspondence of Rufus King*, III, 460.

[48] "Livingston's appointment to the office of District Attorney . . . was a part of the price given to purchase Livingston's vote for Jefferson's election." *Ibid.*

[49] "February the 12th, 1801 Edward Livingston tells me, that Bayard applied to-day or last night to General Samuel Smith, and represented to him the expediency of his coming over to the States who vote for Burr, that there was nothing in the way of appointment which he might not command. . . . Bayard in like manner tempted Livingston." "The Anas," February 12, 1801, in Lipscomb (ed.), *Writings of Thomas Jefferson*, I, 439–40.

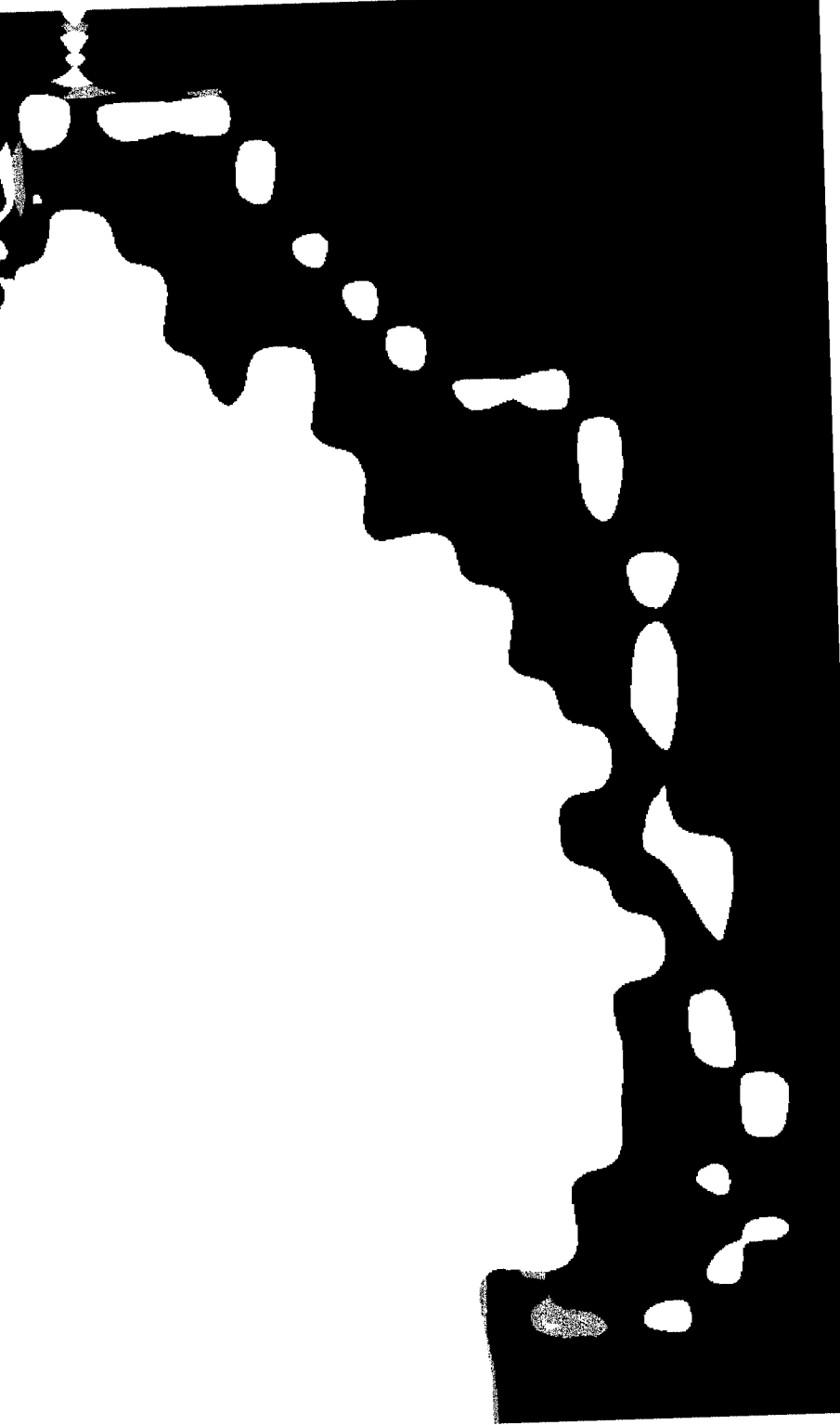
July 12 1804

My Dear Sir

I wrote to you from the Capitol at 3 oclock in the Morning we have been engaged since two yesterday in unavailing attempts to procure a Decision between J & B. eight States for J. 6 for B. & two Maryland & Vermont divided. I know not how long it may last but it is my opinion to a certainty that Jefferson will in the End prevail. the eight States are firmly pledged & none of the rest I am sure recede & the others have not I believe committed themselves. Nothing will come in the Mail to day just closing adieu

Yours truly
Edw Livingston

EDWARD LIVINGSTON TO THOMAS TILLOTSON



lotson, that Jefferson had eight states, Burr six, with Maryland and Vermont neutralized by an even party division. Furthermore, he was convinced that, irrespective of the length of the contest, it was "next to a certainty that Jefferson will in the end prevail." [50] While there were fluctuations in the voting within certain state delegations, there was no change in the line-up of the states for thirty-five ballots. Finally, on the thirty-sixth, the Vermont Federalist, Lewis Morris, left the hall and Matthew Lyon was able to cast the vote of that state for Jefferson. Save in New Hampshire, Massachusetts, Rhode Island, and Connecticut, the opponents of Jefferson voted blank ballots. Maryland cast her vote for Jefferson, thereby giving him the election with the support of ten of the sixteen states.[51]

Livingston's first congressional career closed with the adjournment of the Sixth Congress, March 3, 1801. During this period the Federalists had been in control of all the branches of government; yet he earned for himself an enviable reputation in the field of national politics. Livingston had become a Republican House leader following the retirement of Madison in 1797 and had played an important role in the election of Jefferson. He had no cause to regret his decision not to stand for reelection in 1800, as the road to political preferment was assured.

[50] Livingston to Thomas Tillotson, February 12, 1801, in Olin Papers (Manuscripts Division, New York Public Library).

[51] *National Intelligencer and Washington Advertiser*, February 13, 1801, *et seq.*

Chapter V

A FEDERAL AND CITY OFFICIAL

THE leaders of the factions of the Republican party in New York fully recognized the political value of victory in the year 1800. They appreciated that a return of a Federalist majority to the legislature would ensure to that party the electoral vote of the state with continued control of national affairs. Then too, the state Council of Appointment would remain Federalist with little chance of a Republican victory in the state election of 1801. The Republican defeat in the April, 1799, election convinced its leaders of the necessity of subordinating their personal ambitions to the interest of party unity. Consequently, factional differences were forgotten and harmony prevailed during the campaign of May, 1800. Burr managed the campaign with consummate prudence, judgment, and skill; he employed every known political artifice to ensure victory; [1] and the successful outcome was due primarily to his judicious selection of the candidates.

Feeling that "the prevalence, if not the very existence of republicanism in the United States" depended upon the outcome of the election, Edward Livingston remained in New York during the campaign for "the use I may be here" even though Congress was in session.[2]

[1] New York *Spectator*, November 16, 1801.

[2] Livingston to [Jefferson], April 11, 1800, in the Ford Collection (Manuscripts Division, New York Public Library).

Without publicly assigning a reason for his action, he declined to stand for re-election. This action was probably the result of his decision either to subserve individual aspirations to party interests with the likelihood of receiving suitable reward if the party were victorious, or to avoid possible defeat that would be a liability to future political preferment. When the polls closed, the Republicans had elected Dr. Samuel L. Mitchell to Livingston's seat in Congress.[3] The selection of Republican electors gave assurance of a national victory, and the control of the Council of Appointment indicated a state victory the following spring. As Livingston's term in Congress ran until the following March, he could well afford to wait until after the 1801 election for his reward.

The New York election of 1800 returned DeWitt Clinton to the state Senate and gave him the opportunity to come into his own. He was often selfish, inconsistent, and imperious, but possessed the ability of a statesman. From the beginning of his great career, this practical politician directed his actions to the end of gaining control of the Republican party in New York. His first move was to gain control of the Council of Appointment, for patronage has always been essential to the building of a political machine. When the legislature met, he proposed the selection of a new Council of Appointment, even though the present one had served little more than half its term. The Federalists protested, but the Republicans were in the majority and Clinton had his way; he proceeded to replace the existing Council with one which he, as a member, controlled.[4]

[3] New York *Weekly Museum,* May 17, 1800.

[4] *Ibid.,* November 15, 1800. "On the seventh the Assembly elected DeWitt Clinton, Ambrose Spencer, Robert Rosebloom and John Saunders the Council of Appointment by a 29 majority vote."

A break between Clinton and Governor Jay occurred at the first meeting of the new Council held February 11. Clinton contended that members of the Council, in addition to the governor, possessed the right of nomination; Jay held that the governor alone possessed this prerogative, while the right to confirm or reject was reserved to the other four Council members. A stalemate followed and Jay's failure to reconvene the Council seemed so gratifying to Clinton as to make it appear that he had deliberately attempted to provoke the Governor into such a course of action. Clinton fully appreciated the advantage of delaying appointments until after the election, for no political organization has sufficient patronage to satisfy everyone. Disappointed office seekers become either dissatisfied and work half-heartedly or become disgruntled and desert to the opposition; those who receive appointments prior to an election feel that they are too important to be classed as workers or they are too self-satisfied to work diligently for victory. Besides, after the election, Clinton would know who among the ambitious leaders would be of value to him and the party. In receiving their appointments, these men would know that they were indebted to Clinton for their positions and would willingly do his bidding.

The state campaign of April, 1801, was vigorously fought, but the Federalists could make no headway against the spirit of the times. Beyond the boundaries of New England, Federalism had declined much in a year. The Republicans supported George Clinton for governor and Jeremiah Van Rensselaer for second place on the ticket. The Federalists nominated Lieutenant Governor Stephen Van Rensselaer for governor and named James Watson as his running mate. The efforts of Hamilton, Jay, Rufus King, and Gouverneur Morris

could not counteract the work of the Clinton, Livingston, and Burr followers who stood united in the campaign. The election of George Clinton gave the Republicans complete control of the state.[5]

DeWitt Clinton was jealous of Burr and felt that he stood in the way of his gaining control of the state political machine. This prototype of the political boss saw no room in New York for two Republican leaders and decided to crush Burr. To accomplish this, Clinton first had to gain unquestioned control of the Council of Appointment by securing a change in the organic law which created that body. On April 6 a complaisant legislature called a constitutional convention for October 13, 1801, to make the necessary changes.[6] Clinton so effectively concealed his intentions toward his rival that Burr, who was president of the convention, favored and worked for the provision that gave to each member of the Council the right to nominate as well as to confirm.[7] Thus, by his own action, Burr gave Clinton the power to overthrow and humiliate him.

At the first meeting of the Council following the constitutional change, the proscription of the Burrites along with the Federalists was begun. DeWitt Clinton quickly disclosed his policy of destroying Burr and satisfying the Livingstons. Out of the six or seven thousand appointments made by the Council, not one went to a friend of Burr.[8] The Clintons and the Livingstons fared royally. In a broadside issued at this time, "Plain Truth" lists the political places held by the Clintons and the Livingstons, and cites fourteen positions held by the

[5] *Ibid.*, June 13, 1801.

[6] *Civil List, for the State of New York* (Albany, 1888), 125.

[7] *Ibid.*; Hammond, *History of Political Parties in the State of New York*, I, 164–67.

[8] Alexander, *Political History of the State of New York*, I, 119.

Clintons which paid $53,000 in salaries, and twelve held by the "Noble Family of Livingstons" worth $33,950.[9] While probably unwise politically, it was not an idle boast of one of the younger Livingstons when he said that "to be born with their family name is a fortune to any man."[10] When the famous Council of 1801 had finished its work, nothing remained for succeeding Councils to do, until Clinton returned in 1806 to crush the Livingstons.

Jefferson by his actions appeared to be in hearty accord with Clinton in his determination to crush Burr and appointed him dispenser of Federal patronage for New York. Jefferson sent the Chancellor to France and made Edward Livingston United States attorney for the District of New York, March 27, 1801.[11] Later, the Council of Appointment further rewarded Livingston by appointing him mayor of New York. This position paid him in fees a salary variously estimated as being from $10,000 to $15,000 annually.[12] Livingston's brother-in-law, Thomas Tillotson, was secretary of state and John Armstrong,[13] another brother-in-law, was a United States senator. Smith Thompson, a third brother-in-law, and his cousin, Brockholst Livingston, were associate justices of the state Supreme Court.[14] A fourth

[9] Fox, *Decline of Aristocracy in the Politics of New York*, 63–64.

[10] New York *Evening Post*, February 26, 1802.

[11] New York *Daily Advertiser*, April 4, 1801; *Civil List, for the State of New York* (Albany, 1886), 490.

[12] *Ibid.*; Richard Hildreth, *The History of the United States*, Ser. II (New York, 1852), II, 427–28; New York *Herald*, February 24, 1804. The *Herald* itemized the positions and salaries held by the Clintons and Livingstons, with DeWitt Clinton's salary as mayor listed as "about $15,000.00."

[13] New York *Weekly Museum*, November 15, 1800.

[14] New York *Spectator*, January 9, 1802; Alexander, *Political History of the State of New York*, I, 150.

brother-in-law, Morgan Lewis,[15] who had served as chief justice of the state Supreme Court, was the Clinton-Livingston candidate for governor in 1804, when Burr with his Federalist supporters was barely defeated.

Both Federal and state governments were generous to Livingston. The position of United States attorney was profitable as the salary was gratifying and he could maintain valuable contacts with the party leaders in Washington. The work was congenial for it permitted him to engage in the practice of his chosen profession. The mayor's office was such a highly desirable position that DeWitt Clinton gave up his seat in the United States Senate to accept the office when Livingston resigned in 1803.[16] In this dual capacity, Livingston was an important personage, favorably situated to protect and promote his political affairs. The duties of the two offices, however, entailed numerous responsibilities, very few of which he was able to delegate to his subordinates as their selection had been made on the basis of political expediency rather than on merit. Either position was a full-time job, and especially was this true of the mayor's office.

As United States attorney, Livingston represented the Federal government in all cases arising in the district in which the government was interested. Even when the opposing counsel was one of the leading New York lawyers, Livingston was usually successful; yet he settled the majority of the cases without litigation. The duties of the office were varied and called for a wide range of activities: trial of admiralty cases; [17] interpretation of

[15] *Civil List, for the State of New York* (Albany, 1887), 166.

[16] New York *Daily Advertiser,* October 12, 1803; *Minutes of the Common Council of the City of New York, 1784–1831* (New York, 1917), III, 19.

[17] New York *Spectator,* February 24, 1802.

laws relating to import duties; institution of legal proceedings for collection of monies; and serving as collection agent for the national Treasury. The most important source of revenue was from the payment of customhouse bonds, which were small in amounts but large in number. At regular intervals settlements of these accounts were made with the Federal Treasury.

In the position of mayor of the city, it was Livingston's duty to preside at the sessions of the Common Council as well as to exercise the executive functions of the office. He was judge of the city Court of Common Pleas which possessed both civil and criminal jurisdiction and supervised the municipal affairs all the way from enforcing the assize of bread to the regulation of finance.[18] The city was experiencing a rapid growth which brought in its wake many pressing problems to perplex the city fathers. In order to be able to attack these problems intelligently, Livingston maintained close contact with the various civic and political organizations. The increase in population necessitated an expansion of public services that presented the problem of enlarging existing agencies, creating new departments, and providing additional office space to house the new employees. The political aspects of the problem required careful consideration. While the creation of new positions and the erection of new buildings would provide employment for additional persons, which was desirable from the standpoint of patronage, it raised the question of new taxes, always an effective weapon for the opposition to wield at election time. Livingston was progressive and genuinely interested in the welfare of the city; yet he acted cautiously to avoid unwise political

[18] *Minutes of the Common Council of the City of New York, 1784–1831*, III, *passim*.

moves that would have nullified his conscientious effort to administer the affairs of the city in a judicious manner.

The urgent problem of securing an adequate supply of pure water for the city received Livingston's immediate attention. Shortly after he became mayor, the city awarded a contract to the Manhattan Waterworks, a subsidiary of Burr's Manhattan Company, to install a new waterworks system. The new plant, a forerunner of the present-day system of reservoirs and aqueducts, met the requirements of the city for several years. About the same time it was decided to erect a new city hall, and in order to secure for the city the best available architectural talent, a cash prize was offered to the person submitting the best plan. The prize was awarded to John F. Mangin and John McComb, Jr.,[19] and the cornerstone of the new building, which would "vie in taste and magnificence with any public structure in the United States," was laid by the Mayor on May 28, 1803, with great ceremonies.[20]

On strictly political questions, Livingston was a regular party man; the city patronage was distributed among the faithful, and the appointments as inspectors for elections and canvassers of election returns were reserved for the diligent workers. As certain acts of the Common Council were subject to final review by the state legislature, it was highly desirable that harmonious relations should exist between the local officials and the leaders of the majority party at Albany. The unavoidable delays which this charter provision occasioned the city government were irritating and at times expensive. It was trying enough when the legislature was in session, but it was quite exasperating when that body was in recess. On ac-

[19] *Ibid.*, 133–34.

[20] New York *Spectator*, May 28, 1803.

count of his party regularity and friendly relationship with the Albany political powers, Livingston was able to put through the legislature certain charter amendments which gave the city full authority to act in such routine matters as the opening and extension of streets and closer supervision of the almshouse.[21]

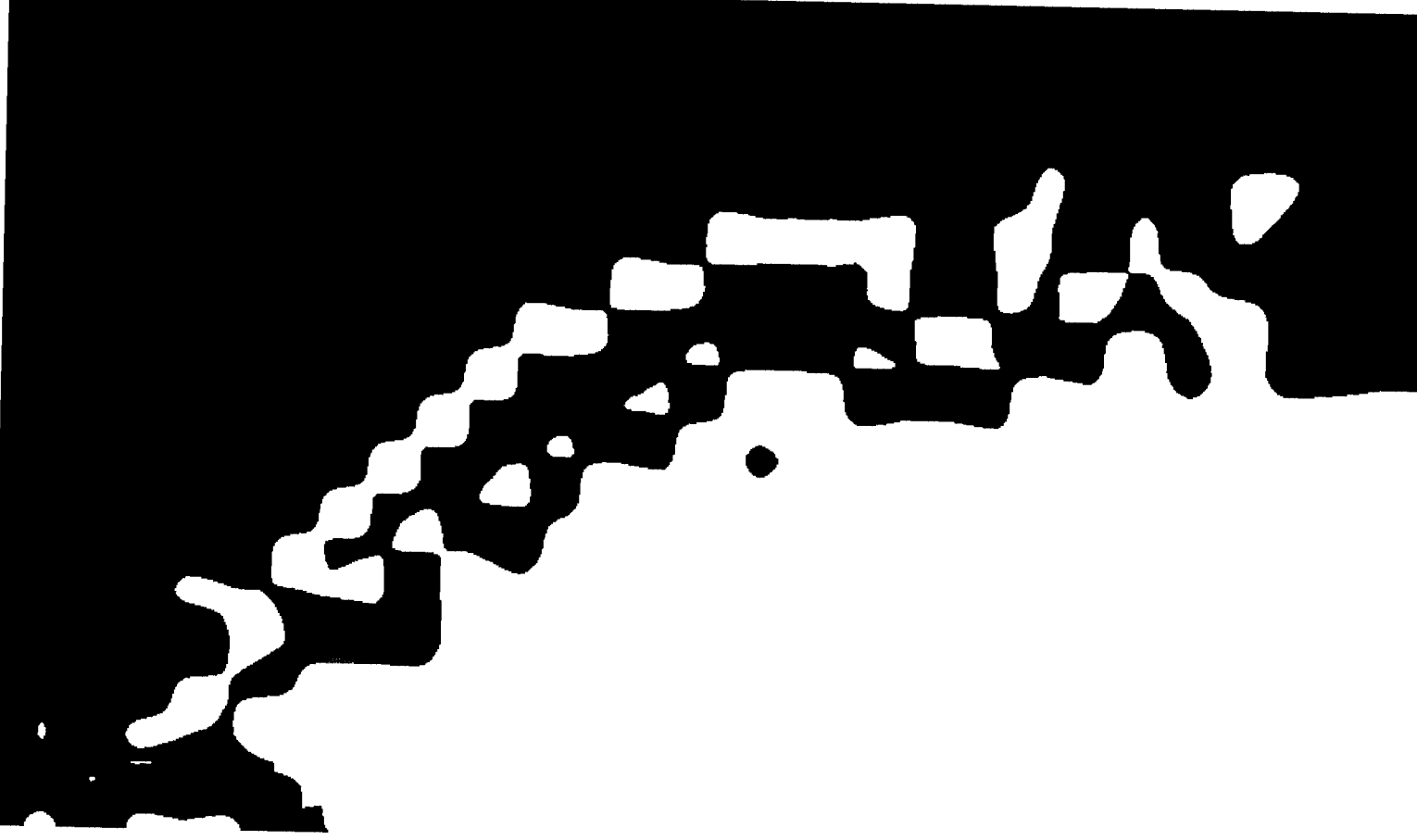
The lax and unbusinesslike manner with which the sessions of the Mayor's Court were conducted had resulted in irregularities and unnecessary delays in the dispatch of business. Unqualified persons were practicing before the Court, and the attorneys, rather than the judge, were determining the order of procedure for its sessions. The attorneys were not required to furnish the Court with a list of their cases; consequently, the clerk was unable to keep a correct calendar of the Court or to complete his minutes promptly. No standard form was used to issue a writ or a process and it was a common practice to subpoena witnesses for the sole purpose of receiving pay for a day's attendance in court without any regard to their knowledge of the facts relative to the case at trial. Necessarily, the dignity of the Court had suffered and the need of reform was generally recognized.

Livingston was admirably fitted by training and experience to serve as presiding officer of the Court. His legal training had given him the knowledge necessary to render fair and sound judicial decisions; and his practice at the bar had taught him how the sessions of the Court should be conducted. As judge, it was his duty to establish practices of procedure and rules of order for his Court, and immediately after assuming office, Livingston inaugurated a program of reform that resulted in restoring its former dignity and prestige. The reform measures are to be found in the fifty-four "Rules and Orders"

[21] *Ibid.*

NEW YORK CITY HALL

From an 1806 engraving in the New York Public Library



which he prepared for distribution among all persons doing business with the Court.[22] He also had printed and placed in the hands of the members of the bar a selective list of his decisions for the purpose of having them examine the reasoning and the authorities on which they were founded. Since the decisions were without the sanction of a higher tribunal they were "to be considered more as opinions than judgments which determine the law." [23] The list was selected to cover various principles of law, such as slander, use of profane and obscene language, assault and battery, trespassing, assumpsit, partnerships, marital relations, contempt of court, demurrers, and motions for new trials. The members of the bar were requested to examine them carefully in order that such as were erroneous might "be reviewed and corrected in other cases involving similar principles." [24] The points which were settled, he informed them, could not again be raised for useless discussion.

Livingston not only used the courtroom as a temple of justice, but transformed it into a classroom in which was offered instruction in citizenship. Even before the turn of the century many European immigrants were settling in New York; the largest of these racial groups was the Irish. Livingston recognized their potential political strength and began to cultivate their favor. Concessions were granted and consideration was shown these newcomers with the purpose of enrolling them in the ranks of the Republican party. In order that they might be assisted in meeting the legal requirements of citizenship, they were encouraged to come to the courtroom where

22 Edward Livingston, *Judicial Opinions, Delivered in the Mayor's Court of the City of New York, in the year 1802* (New York, 1803), 1.

23 *Ibid.*

24 *Ibid.*

his court clerk could help the applicants fill out all the necessary forms. The Federalists were indignant at his action and accused him of suspending all civil business of the Court for the purpose of "transmogrifying *Irish Emigrants into American Citizens.*" What mattered it to Livingston and his political associates that he was criticized for using the time of public servants to make citizens "of the dregs and refuse of Europe"? What did it profit the opposition to charge that the "seat of justice is converted into an engine to further electioneering purposes" so long as those being helped were all good Republicans with votes in their pockets? [25]

Livingston was sincerely interested in ameliorating the status of the poor and in improving the conditions of the incarcerated criminal. His contact with the Mechanics' Society afforded him an opportunity to set forth his views upon these two questions. The Society was a large and powerful organization, which held an anniversary meeting each January. At the meeting held in 1802 Livingston's toast, "The Noblest Charity—that which is supported by industry and the spirit of improvement," [26] clearly reveals an intelligent interest in the field of social welfare far in advance of his times. In fact, this statement and others contained in the letter he addressed to the Society at their 1803 meeting appear to be more in keeping with the spirit of the second quarter of the twentieth century than of the first decade of the previous one.[27] When he challenged industry to bear its part of the burden of caring for the poor; when he demanded that plans be made for the "restoration

[25] "An American," in New York *Herald,* May 1, 1802.

[26] New York *Daily Advertiser,* January 7, 1802.

[27] Livingston to the "President of the Mechanics' Society, January 1, 1803," in New York *Herald,* January 19, 1803.

of unfortunate citizens sunk by misfortune below his former standing in Society"; and when he insisted that constant employment would provide "a comfortable subsistence" for "our fellow citizens," [28] he anticipated the arguments of present-day social reformers. He contended that there were those capable of supporting themselves by their labor, but who by particular circumstances were out of employment, and hence were forced either to experience want or apply for relief.

The germ of his Criminal Code, written at a later date, is to be found in this communication in which he maintained that employment of the poor lessened crime, for the most hardened offenders against society "commenced their career of crime by some petty offense committed in distress or conceived in the vacant hour of idleness." [29] His advocacy of solitary confinement of the criminal and of provisions by society to utilize his services when discharged from prison find expression in Livingston's great penal work as do certain of the features outlined in the plan which he proposed to the members of the Mechanics' Society.

As a man of refinement and scholarly attainments, Livingston was desirous of developing cultural advantages for the people of the city and he identified himself with the small group of public spirited citizens, similar to that found in every community, who were attempting to provide such means of improvement. Their activities found expression in the organization of the Academy of Fine Arts with Livingston as its president.[30] The purpose of the organization was to secure plaster casts of the valuable Paris collections; copies of the best masters of the several schools of painting, together with a few

[28] *Ibid.* [29] *Ibid.*

[30] New York *Daily Advertiser,* January 24, 1803.

originals; and a carefully selected group of architectural models, drawings, and plans for the erection of a gallery for their exhibition. Livingston was one of the first subscribers and solicited funds for the program. His brother, the Chancellor, who was minister to France, rendered valuable assistance by selecting the statues and arranging for the casts to be made, in addition to selecting the paintings for the Academy. The first exhibition was held in the Rotunda of the Circus just prior to the yellow fever epidemic in the year 1803.[31]

The 1803 epidemic was most virulent, and it took an enormous toll of life. During the months of July, August, and September, the daily newspapers carried long lists of names of victims of the malignant fever, which did not begin to subside until the latter part of September.[32] The first cases reported were in the area near the waterfront, but shortly thereafter the health department reported deaths in the better residential sections of the city. Fear gripped the people, and in their panic everyone who could departed from New York.

Livingston remained at his post and devoted his time and energies to the service of his people. He attempted to quiet their fears and to persuade them to meet the situation with courage and fortitude, without at any time attempting to deceive them or to withhold the facts. In order to quell alarm as much as possible, he carried on the functions of government in the ordinary manner until August 15, when the general prevalence of the disease necessitated suspending the sessions of the Common Council until September 29.[33] By his whole

[31] New York *Spectator*, May 25, 1803.

[32] New York *Daily Advertiser*, August 6, 1803, *et seq.*

[33] *Minutes of the Common Council of the City of New York, 1784-1831*, III, 375–78.

conduct he gave an example of activity, courage, and benevolence rarely to be met with in public servants. Fearlessly he accompanied physicians daily on their rounds to the "most deserted and dangerous parts of the city and . . . [paid] frequent visits to Bellevue" to examine the condition of the sick and to administer to their comfort from his own purse. Day and night he visited the different sections of the city to see that the watchmen were at their posts of duty and that the property of the citizens who had left the city was being guarded. Only a man of strong constitution could have stood the physical and nervous strain of these trying days and nights.

While Livingston slept and rested but little during these weeks, neither did politics. Reports were circulated that the city watchmen were not at their posts of duty and that the property of the absent citizens was not being protected.[34] The appreciation of the obligation that the citizens of the city were under to Livingston for his exertions in alleviating the distress of the poor and in attending personally to the safety of the city during the calamity found expression in many newspaper articles. Such words of appreciation irritated the editor of the *Herald* who informed his readers that "we are disposed to believe from what has come under our own observation (not wishing at the same time to derogate one single iota from the Mayor) that the other members of the Board of Health have discharged their duty also with equally as much fidelity and attention as the Mayor and are entitled to every atom as much praise." Perhaps curiosity "to see yellow fever in all of its different stages," he concluded, "has not led them to visit patients in every hole and corner of the city, nor does the duty of

[34] New York *Spectator*, September 28, 1803.

their office make it necessary. It belongs to the physicians." [35]

Whereas in normal times the public is usually unappreciative of unselfish acts of public servants, in times of stress it is often resentful of any criticism of those who make personal sacrifices in the interest of the general welfare. In the latter part of September, Livingston was stricken with the fever and for several days there was uncertainty as to his recovery, but thanks to his vigorous constitution he soon was convalescent. While his life was in danger, the public was solicitous about his condition and voiced their resentment of the derogatory statements of the *Herald.* The editor realized that a blunder had been made and a few days later published a second article in whch he disavowed authorship of the editorial. Instead of criticism of the Mayor, he continued, there should be unstinted praise and wholehearted thanks of the entire people for Livingston's tireless efforts and unselfish actions. He assured his readers that, had he not been absent from the city, no such article of criticism would have appeared in his paper, and promised that the individual responsible for the editorial would not again have the opportunity to express his sentiments through the columns of the *Herald.*[36] But such is the game of politics, and he who plays it must expect criticism and accept it as did Livingston.

From the time of his last year in Congress, misfortune shadowed Livingston's footsteps to the end of his life. At intervals misfortune would accelerate her pace and upon overtaking him would deal blows that only a man of strong courage and indomitable will could withstand. Such blows as a man receives weaken or strengthen him

[35] New York *Herald,* October 1, 1803. [36] *Ibid.,* October 5, 1803.

decisively, for they break a character or consolidate it amazingly. Nothing bears stronger witness to the strength of Livingston's character than his ability to withstand adversity and his refusal to accept defeat.

The first of the series of his misfortunes came with the death of his mother in July, 1800; in March of the following year his wife succumbed to an attack of diphtheria.[37] His home life had been a happy one, and he felt the loss keenly. The period of readjustment was difficult and trying. A home for his three children, who failed to inherit his robust constitution, must be found; and a change must be made in his daily schedule. Within a short time the children made their home with his brother, John R. Livingston, whose wife was Eliza McEvers, a sister of their mother; and he gave more of his time and energy to his public work.

Immediately following Jefferson's inauguration, the Republican leaders began a campaign to discredit Burr. DeWitt Clinton was in hearty accord with the plan as it fitted in admirably with his scheme to destroy Burr politically in New York. The battle in the state was waged through the columns of the press, with numerous pamphlets and public statements. Indiscriminate charges, violent countercharges, and vehement denials were made in rapid order. Partisans filled the newspapers with accusations and explanations; and the friends of each engaged in a bitter, vituperative pamphlet warfare. The fight spread beyond party lines and the Federalists made political capital of the situation. Outside of New York the battle raged with equal fury and was carried to the floor of Congress, where Jefferson was charged with having purchased the presidency.

The actions of every congressman at the time of the

[37] Livingston, *Livingstons of Livingston Manor*, 403.

election were subjected to the closest scrutiny; the underlying motives that determined the vote cast by each member were carefully questioned; and when the full story of the election was told, the reputations of several individuals were badly shaken. During the period of the election, Livingston maintained friendly relations with Burr, who was attending a session of the legislature at Albany. He received letters from certain Republican leaders at the state capital in which it was suggested that he throw the New York vote to Burr after the first or second ballot.[38] The Jefferson forces were eager to gain and hold the New York support, not only for its one vote but for the influence of the vote of the New York delegation on other states. Livingston had not been favorably inclined to Jefferson and it was probably the Chancellor's "peremptory letter" that finally influenced him to vote against Burr. He was credited with the ability to deliver the New York vote to either Burr or Jefferson. It was also asserted that he could influence the votes of individual members in certain other state delegations. Whether or not these statements were valid, Livingston occupied an important position. Even if he were unable to deliver the New York vote to Burr, at least he could have nullified it by shifting his support at any time during the balloting, for the delegation consistently voted six to four for Jefferson.

As Livingston had held such a strategic position, it naturally followed that he would be singled out for attack when the fight between the Jeffersonians and Burrites began. The situation as it developed in this Republican fight came to be more and more embarrassing to him for he was a conspicuous target of attack not only by

[38] [Van Ness], *Examination of the Various Charges Exhibited Against Aaron Burr*, 95, 97.

the friends of both Burr and Jefferson, but also by the Federalists as well. Burr's adherents were firmly of the opinion that he was a political opportunist who had deserted to the enemy and sold out their leader. The friends of Jefferson knew that it was with difficulty that his support for the President had been secured and they were suspicious of his association with Burr. The assertion that Livingston was Burr's "confidential friend" at Washington during the contest appeared to be substantiated by statements of the latter to Albert Gallatin. Writing from New York, January 16, 1801, Burr informed Gallatin that "Livingston will tell you my sentiments on the proposed usurpation, and indeed of all other occurrences and projects of the day." [39] According to Jefferson the Republican leaders were quite concerned over the Federalist plan to usurp and to remain in power "through the medium of a Federalist President of the Senate" by the legislature's taking "the nomination of the Executive entirely from the people." [40] And in the effort to allay the fears of the Republican leaders in Washington as to his attitude, Burr, from Albany, assured Gallatin as late as February 12, that "in case of usurpation, by law, by President of Senate pro tem., or in any other way, my opinion is definitely made up, and is known to S[amuel] S[wartwout] and E[dward] L[ivingston]." [41] Livingston had been unable to explain this relationship to the satisfaction of Jefferson and his friends.

One who has vowed himself to politics is no longer a

[39] Burr to Gallatin, January 16, 1801, in Adams, *Life of Albert Gallatin*, 245.

[40] Jefferson to Coxe, December 31, 1800, in Lipscomb (ed.), *Writings of Thomas Jefferson*, X, 187–88.

[41] Burr to Gallatin, February 12, 1801, in Adams, *Life of Albert Gallatin*, 246.

free agent, and nothing that Livingston did improved his situation. His denial of the charge of his New York enemies that he was the secret and "confidential friend" of Burr and was in full co-operation with the group that was attempting to raise the New Yorker to the presidency did not change the opinion of anyone. It was expected that he would make such a denial. And when, in justice to Burr, he stated that Burr had never evinced "any desire that [the] vote of the state should be transferred from Mr. Jefferson" to himself,[42] the followers of Jefferson were convinced that Livingston was still on friendly terms with the Vice-President. For it was recalled that Livingston had embarrassed the new Executive by aiding the Vice-President in his unsuccessful efforts to secure a part of the patronage. In an atttempt to commit Jefferson, Livingston had announced publicly and without authority that "a positive arrangement was made by the Administration by which" one of Burr's friends "was to be appointed to the Naval office in New York." [43] The Federalists were positive that Livingston had sold his vote to Jefferson and pointed to the appointments of Livingston and the Chancellor as proof of the fact.

Livingston's actions during the election period were open to suspicion and subject to question. A man of his political acumen should have known that the only safe course of action was to align himself definitely and publicly with one or the other of the factions. With the lines of cleavage drawn as sharply as they were, his judgment should have told him that the failure of anyone

[42] Livingston to "The Vice-president of the United States," April 28, 1803, in New York *Morning Chronicle*, April 28, 1803; Davis, *Memoirs of Aaron Burr*, II, 97.

[43] Burr to Gallatin, June 21, September 8, 1801; Gallatin to Jefferson, September 12, 1801, in Adams, *Life of Albert Gallatin*, 283–85.

to reach a decision promptly would subject that individual to charges of bartering which would ruin his reputation. For a man of the acumen, sagacity, and judgment of Livingston, it is difficult to understand or explain his actions satisfactorily. He should have known that irrespective of who might be promoted to the presidency, repercussions would follow and full publicity would be given to the whole proceedings. This publicity, when it came, undermined his political influence in the state and destroyed his influence in national affairs for almost a quarter of a century.

In political battles the rules of warfare fail to provide for the protection of any of the combatants. No one engaged in political controversies has the assurance that he will emerge unscathed. Reputations of the followers are as easily, or often more easily, shattered than those of the leaders. An attack was made on Livingston's reputation, not only along the New York sector, but it was a conspicuous target on the congressional front. In the course of debate William B. Giles had defended the Virginia President and was followed by James A. Bayard of Delaware who accused Jefferson of buying the office of president. In telling the story, Bayard created a sensation in the House of Representatives. "And now, sir, let me ask the honorable member," said Bayard, "what his reflections and belief will be, when he observes that every man, on whose vote the event of . . . [Jefferson's] election hung, has since been distinguished by Presidential favor?" He then proceeded to call the roll of the more important members of Congress who had been rewarded. The active and efficient Charles Pinckney, senator from South Carolina, had received the appointment of minister plenipotentiary to the Court of Madrid. James Lynn, who held the deciding vote of New Jersey,

had been appointed to the profitable office of supervisor of his district. As for the important Matthew Lyon of Vermont, it was too much to give an office to him as "his character was low"; but his son had been provided for in one of the executive offices. The valuable W. C. C. Claiborne, who held the vote of Tennessee in his hands, "has since been raised to the high dignity of Governor of the Mississippi Territory." In continuing the roll call he further stated: "I shall add to the catalogue but the name of one more gentleman, Mr. Edward Livingston, of New York. I knew well, full well I knew the consequence of this gentleman. His means were not limited to his own vote; nay, I always considered more than the vote of New York within his power. Mr. Livingston has been made the attorney for the district of New York; the road of preferment has been opened to him, and his brother has been raised to the distinguished place of Minister Plenipotentiary to the French Republic." [44]

Notwithstanding the criticism which had been directed at him generally, and the serious predicament that confronted both Livingston and the party leaders by the existing conditions, Clinton had Livingston reappointed mayor.[45] It was not personal interest in Livingston's welfare, but political expediency, that prompted Clinton's action in this matter. All positions filled by the Council of Appointment were for a period of one year, and, at that particular time, Clinton could ill afford to antagonize the powerful Livingston family by refusing to reappoint the Mayor. Clinton's primary concern was the elimination of Burr and the disposition of all other questions was made with the view of gaining

[44] *Annals of Congress,* 7 Cong., 1 Sess., 640–41.

[45] New York *Daily Advertiser,* April 2, 1803.

that end. Consequently, Livingston remained in office and waited for a shift of public interest.

This desired shift came with the outbreak of yellow fever. In the city politics were temporarily forgotten, and Livingston's humanitarian work effectively silenced a majority of his critics. The memory of the public is short-lived, and for a time it appeared that there would be a reaction in Livingston's favor and that he would be able to re-establish himself politically. Other complications had arisen, however, that completely thwarted his hopes.

Many demands, both official and unofficial, were made upon Livingston and he had little time to supervise properly the work of his political assistants. Furthermore, he did not have the inclination to check carefully the work of the employees in the two offices. Such laxity in the conduct of business often leads to dishonest practices and in the case of Livingston his inefficient management and failure to exercise ordinary precaution proved most expensive to him.

In the District Attorney's office Livingston placed one of the clerks in charge of the department that handled the collection of Federal taxes. There were no provisions for supervising the work of the office; consequently, no check was made of the accounts of the clerk assigned to this responsible position except the periodic audits of the books by the agents of the United States Treasury Department. As these audits came at regular stated intervals, the clerk was able to use personally the monies collected between the visits of the Treasury agents and return it prior to an audit. Finally, the amount taken became so large that the clerk was unable to return it and exposure resulted. Livingston had failed to exercise ordi-

nary precaution to safeguard public funds entrusted to him, but he recognized his legal responsibility for the dishonest practices of his confidential agent.[46]

In June, 1803, the Treasury Department inspectors called at the office of the District Attorney to check the accounts. A cursory examination revealed a shortage, but the extent could not be determined until a careful audit was made. As early as July 2 Gallatin informed Jefferson that he "would not be astonished if the whole deficiency exceeded forty thousand dollars," as the inspector's report was "neither clear nor final." [47] Livingston realized the seriousness of the situation: his political reputation had been scarred by his political enemies after the Jefferson-Burr fight; and his personal reputation was now endangered by the charges of being a defaulter. He sensed that Gallatin would demand his removal from office; and he felt confident that Jefferson would not be inclined to extend clemency to him.

Livingston knew that only recently he had angered the President by his activities in regard to the question of the Franco-Spanish spoliations which had occurred during the quasi war between the United States and France. He and four other outstanding American lawyers, Jared Ingersoll, William Rawle, J. B. Kean, and Peter S. Du Ponceau, had furnished an opinion to Don Carlos Martinez de Yrujo, Spanish minister at Washington, in which they sustained the Madrid contention that France was responsible for the offenses and that she alone should pay the claims. Jefferson and Madison seriously considered prosecuting the five lawyers under the provisions "of the law passed January 30, 1799, com-

[46] *American State Papers, Public Lands,* II, 19.

[47] Gallatin to Jefferson, July 2, 1803, in Henry Adams (ed.), *The Writings of Albert Gallatin* (Philadelphia, 1879), I, 126.

monly known as Logan's Act." A little later in the year, the Senate approved its committee report which directed the President to institute proceedings against the five men. Only the doubtful constitutionality of the law and the high legal, social, and political character of the gentlemen, which made prosecution politically unwise, caused Jefferson to disregard the Senate's instructions although he was most disturbed and irritated about the matter.[48]

It was clear to Livingston that the situation in New York was as unfavorable to him as it was in Washington. He understood that his family could be of no help to him under the circumstances; he realized that his political associates would avoid him just as soon as the news of the defalcation became public; and he knew that a concerted effort would be made immediately to force him out of both offices. He was on the defensive; neither he nor his family was in a position to fight; but he made a determined though futile effort to mitigate the severity of the disaster. In the hope of making some satisfactory adjustment with the Treasury Department, Livingston visited Washington early in July; [49] but, almost immediately on his arrival, he reached the conclusion that the effort would be useless. He did not see Jefferson, who was out of the city; and he confined his contacts with Gallatin to a visit to the Secretary's home, where he avoided any reference to the subject, and made the serious mistake of leaving "the city two days after without

[48] Adams, *History of the United States,* II, 245–60. For Logan's Act, see *Annals of Congress,* 5 Cong., 3 Sess., Appendix, 3795, which declares it a misdemeanor for an American citizen to correspond with a foreign government or its agent on the subject of a dispute between that government and the United States.

[49] Gallatin to Jefferson, July 2, 1803, in Adams (ed.), *Writings of Albert Gallatin,* I, 126.

calling at the office." [50] Information reached him concerning DeWitt Clinton's recommendation in regard to his successor and the Senator's interest in the New York mayoralty. Livingston believed that his days for political preferment were past and that his legal practice would suffer as the result of the charge of dishonesty. The outlook was far from bright; but he assumed full responsibility for the acts of his agent, and he refused to prefer charges against the real malefactor.

Livingston's efforts to raise the necessary funds to discharge his obligation were not successful. The banks were not disposed to grant a loan under the circumstances. Later during the yellow fever epidemic money became scarce, as everyone was hoarding; consequently, the banks were unable to finance a loan to the amount of the indebtedness had they been willing to do so. Although Livingston had enjoyed a handsome income during the past few years, he had little or no cash in reserve. He had large real estate holdings but a part of this property was encumbered with mortgages [51] which made it impossible for him to convert it into cash on short notice. The exact amount due the government was not determined for several weeks [52] and it was during this interval that Livingston succumbed to an attack of yellow fever.[53]

[50] *Id.* to *id.*, July 27, 1803, *ibid.*, 133–34.

[51] Solicitor of the Treasury to Comptroller of the Treasury, October 31, 1832, in Records of the Department of Justice, Solicitor of the Treasury. Papers relating to Edward Livingston's settlement of the account of the Department of the Treasury, 1820–1830, in The National Archives.

[52] Exemplified copy of judgment confessed by Edward Livingston, December 22, 1803, in U.S. District Court, District of New York, in Walden *v.* Livingston, filed June 9, 1829, and again June 1, 1836. U.S. Circuit Court for the Eastern District of Louisiana, Case No. 676 (Federal Court Building, New Orleans).

[53] New York *Daily Advertiser,* October 27, 1803.

Meanwhile, Gallatin, who was insistent that Livingston be removed from office immediately, proceeded as soon as he convinced Jefferson that there "ought to be no further hesitation with E. Livingston." [54] "Much irritated" at the insistent demands of the Secretary,[55] the District Attorney tendered his resignation and relinquished the office during the latter half of August. At the same time Livingston forwarded his resignation as mayor to Governor George Clinton, but declared his intention of retaining the office until the epidemic subsided. Ten days later, August 29, the Governor acknowledged receipt of Livingston's resignation from the office he was "so eminently qualified to fill." [56] Two months later, following Livingston's return to health, the Council of Appointment accepted the Mayor's resignation and selected DeWitt Clinton as his successor.

During his convalescence, Livingston arrived at the conclusion that a change of residence would be desirable to his interests, and that in a different location he could more easily and quickly regain his financial independence. The Chancellor had just recently completed the negotiations with France for the purchase of the Louisiana Territory. The newspaper accounts of the vast resources and the opportunities to amass a fortune in this new country probably were responsible for Livingston's decision to migrate to Louisiana. Having reached a decision he acted with dispatch. He determined not to fight the case but to accept voluntary judgment when the Federal Court convened for the November term. His case came to trial December 22, and he accepted judg-

[54] Jefferson to Gallatin, August 18, 1803, in Adams, *Writings of Albert Gallatin,* I, 138.

[55] Gallatin to Jefferson, August 20, 1803, *ibid.,* 139–40.

[56] New Orleans *Louisiana State Gazette,* July 3, 1826; Hunt, *Life of Edward Livingston,* 104–105.

ment to the amount of $100,000 as he realized that he was unable to accept the alternative of the government whereby he should "truly pay unto said United States the sum of fifty thousand dollars on or before the twenty fourth day of December instant, then this obligation shall be void and otherwise shall remain in full force and virtue." [57] When the audit of the books was finally completed, the deficit was placed at "about forty four thousand" dollars. The "property left liable to the payment of the said debt was," in Livingston's opinion, "of a greater value than the amount" due the government.[58]

Although the incident had been known in political circles for some time, the general public was unaware of the affair prior to the court action. The news served as a signal for an attack on Livingston and the newspapers gave the affair full publicity. The Republicans, had they desired, could ill afford to defend the accused under the circumstances. But the Federalists made the most of their opportunity. They gleefully pointed to such acts of dishonesty on the part of Jefferson's appointees in New York and elsewhere as evidence of his unfitness for the office of president. In alluding to the policy of replacing Federalist officeholders with Republican supporters, the editor of the New York *Herald* informed its readers that they "may see some of the first fruits of this precious system: a practical illustration of the superior-

[57] Exemplified copy of judgment confessed by Edward Livingston, December 22, 1803, in Walden *v.* Livingston, Case No. 676; New York *Evening Post,* December 30, 1803.

[58] Deposition of Edward Livingston, January 22, 1827, U.S. *v.* Livingston, U.S. District Court, District of New York, Records of the Department of Justice, Office of the Agent of the Treasury; an undated office memo summarizing the Livingston case from 1803 to 1832, Records of the Department of Justice, Solicitor of the Treasury. Papers relating to Edward Livingston's settlement of the account of the Department of the Treasury, 1820–1830, in The National Archives.

ity of a republican over a federal officer." As proof of this he cited the fact that within two years the Republican appointee had secured $100,000 of public money for his own use "for which judgment is rendered against him by his own confession," while his Federalist predecessor had been unable to secure one cent during his fifteen years in office.[59]

With utter disregard of the facts, the Federalist newspapers circulated numerous reports tending to discredit the government. It was charged that the government not only had made no attempt to "secure the payment of the said sum or any part thereof" but had allowed Livingston to leave the state without requiring bond of him for the faithful discharge of the obligation.[60] Reports were circulated without respect to truth or facts; it was even charged that Livingston was a defaulter to the city in the amount of $2,000.[61]

Fortunately for Livingston, he escaped the personal humiliation of the newspaper publicity since he was no longer in the state when it appeared. With the court judgment recorded, there was nothing to keep him in New York. By the latter part of December, he had completed all arrangements for his departure, and during the last days of the month he sailed for New Orleans. It was necessary for him to borrow the money from his brother to make the trip, and he arrived in New Orleans with only $100 in cash and a letter of credit for $1,000 [62] to care for his expenses until he could establish himself in his new surroundings.

[59] New York *Herald,* January 4, 1804. [60] *Ibid.,* January 16, 1804.

[61] "Short Queries to Make Long Faces," in New York *Evening Post,* December 29, 1803.

[62] New Orleans *Louisiana Gazette,* December 30, 1806. See Livingston's communication explaining and defending his actions relative to the charges of treason made by James Wilkinson.

Chapter VI

NEW ORLEANS—THE NEW HOME

IN its southward meanderings to the Gulf of Mexico, the Mississippi River turns toward almost every point of the compass. Approximately one hundred miles from its mouth, the river, after flowing to the northeast, veers sharply to the south for a short distance, then curves gradually to the east for several miles, thence changes its course to the north before again flowing toward the southeast, thereby forming a rough crescent. Almost in the center of the curve, on the left bank of the river, Jean Baptiste Le Moyne de Bienville founded New Orleans in 1718. During the succeeding eighty-five years of French and Spanish control the town grew very slowly and on December 20, 1803, when W. C. C. Claiborne, governor of the Mississippi Territory, took possession of the province of Louisiana for the government of the United States, New Orleans had a population of only 8,056 inhabitants, including both whites and blacks.[1]

Other than the slaves and free persons of color who comprised one half of the population,[2] the inhabitants were largely of French and Spanish descent, with the

[1] François-Xavier Martin, *The History of Louisiana* (New Orleans, 1882), 300.

[2] According to Jefferson, the population of Louisiana in 1803 included 3,984 whites, 1,335 free Negroes, and 2,773 slaves. *Annals of Congress*, 8 Cong., 2 Sess., Appendix, 1498–1578.

former predominating.[3] Besides the native-born citizens of Latin descent, known as Creoles, there were those who had come direct from France and Spain as representatives of their respective governments. Even the Americans, who outnumbered those from all other countries other than France and Spain, were almost lost in the city.[4] The Americans were generally merchants and traders employed by the commercial interests of New York, Philadelphia, and Baltimore, which had established branch houses in Spanish New Orleans to compete for the increasingly large and valuable western trade.[5] In addition to the resident Americans, there was an almost steady stream of western boatmen, traders, and frontiersmen from the Ohio and upper Mississippi River territory pouring into the city with their wares, making use of the "right of deposit" which the treaty of 1795 with Spain had guaranteed to the citizens of the United States. After disposing of their wares, these rough, unlettered backwoodsmen spent their profits in wild, boisterous dissipations and engaged in brawls which made them obnoxious to the populace who found it difficult to appreciate the Americans even at their best.[6]

The Creoles developed a distinctive civilization which persists to the present. Refinement, sociability, and the capacity for the full enjoyment and appreciation of the finer aspects of life are among their outstanding characteristics. The people spoke French almost exclusively,

[3] George W. Cable, *The Creoles of Louisiana* (New York, 1910), 122, 134–40; *Mémoires sur la Louisiane et la Nouvelle-Orléans* (Paris, 1804), 9. The author signs himself "M***."

[4] Charles Gayarré, *History of Louisiana* (New Orleans, 1903), IV, 1.

[5] Grace King, *New Orleans, the Place and the People* (New York, 1903), 141; Cable, *Creoles of Louisiana,* 121; *Mémoires sur la Louisiane et la Nouvelle-Orléans,* 10; Vincent Nolte, *Fifty Years in Both Hemispheres; or, Reminiscences of a Merchant's Life* (London, 1854), 86.

[6] King, *New Orleans,* 141.

just as they worshiped almost exclusively in the Roman Catholic church.[7] Many of the wealthier citizens owned plantations near the city, on which the cultivation of sugar cane had practically supplanted the growth of indigo and precluded an increased acreage of cotton; others engaged in the manufacture of cordage, vermicelli, lead shot, distilled liquors, molasses, and sugar.[8] In addition, there were the shopkeepers and those engaged in inland and coastwide trade. As the easy-going disposition of the Creoles was not conducive to the development of those traits and characteristics essential to a successful trader, the export trade was largely controlled by the American shipping interests.[9]

Following the cession of Louisiana to the United States, the inhabitants, regardless of racial antecedents, were discontented and gloomy.[10] The action of the United States government in consolidating all executive, judicial, and legislative power and authority in the hands of Claiborne as "Governor-General and Intendant of the Province of Louisiana" [11] was viewed with grave concern. Such action seemed to portend the establishment of a more despotic government than that administered by Spain, under which the authority and power had been divided between two officials. The new Governor General was charged with the duty of maintaining and enforcing the Spanish laws and municipal regulations which were to remain in force until changed by the United States government; and, since he was not only ignorant as to the laws but was unable either to speak or read the language in which they were written, it

[7] *Ibid.*, 169–78. [8] Martin, *History of Louisiana*, 317.
[9] *Ibid.*, 318. [10] Gayarré, *History of Louisiana*, IV, 2–3.
[11] Dunbar Rowland (ed.), *Official Letter Books of W. C. C. Claiborne, 1801–1816* (Jackson, 1917), I, 307. In several proclamations and communications, this title was used by Claiborne.

was not surprising that the people were apprehensive of Claiborne's actions and policies.[12]

The citizens continued to hope for an improvement of conditions until March 26, 1804, when Congress passed the act relative to the organization of the Louisiana Territory. When it was learned that Louisiana, while as a French and Spanish possession always a unit, was to be divided into the "territory of Orleans" and the "territory of Louisiana," each with its own executive, judicial, and legislative departments, the keen resentment of the people was aroused. They felt that such action diminished their importance and tended to delay their admission into the Union as a state. As the power previously exercised by the Governor General was transferred to the Superior Court, and since a single one of the three judges could constitute the Court, it was contended that the government was as despotic as formerly.

In designating English as the official language of the government, no consideration was given to the preference of the people, their needs, pride, and native customs. It appeared to the Creoles that there was further discrimination against them when importation of slaves was forbidden, while at the same time Americans settling in the territory were permitted to bring their slaves with them.[13] There was a general resentment against the provisions to declare "null and void" certain concessions of lands made by the Spanish government; and the authority granted the President of the United States to appoint "Registers and Recorders of Land Titles" was viewed with anxiety. This anxiety was not groundless, as the registers were empowered to receive and record all titles to property acquired under both the

[12] Gayarré, *History of Louisiana*, IV, 2.

[13] Adams, *History of the United States*, II, 122.

French and Spanish governments. With the agents of the government adopting their own methods of procedure for investigating land claims, for rendering decisions, and for reporting their findings to Congress for review and final action, it was natural for property owners to be apprehensive of a period of endless, ruinous litigation and arbitrary spoliation.[14]

The representatives of the French and Spanish governments, who were not averse to embarrassing the territorial government, further aggravated the local situation by remaining in Louisiana. Colonial Prefect Pierre Clément de Laussat, who had been the agent of France in delivering the territory to the United States, delayed his departure for several months. He realized the vast possibilities in the development of Louisiana and regretted the loss of this former province by France. He hoped that France would some day regain Louisiana and suggested to his government that something should be done to keep alive the resentment of the former colonists against the United States.[15] To certain Creoles, he intimated that the Louisiana transfer was a political trick and in time the colony would be returned to France.[16] To the most zealous in favor of the French control, "as a feeble testimonial of the satisfaction and good will of that Government," he distributed over seven hundred pounds of powder and inferred that as they were good huntsmen the gift would be duly appreciated.[17] On every available occasion he appealed to the racial pride of the French Creoles as a means of keeping them loyal to France. Among certain citizens of French descent, expressions and acts of opposition to the American gov-

[14] Gayarré, *History of Louisiana*, IV, 5–7.
[15] *Ibid.*, 12.
[16] Martin, *History of Louisiana*, 322.
[17] Gayarré, *History of Louisiana*, IV, 9.

ernment were to a degree but a reflection of the attitude of Laussat.[18]

The Spanish officers and officials lingered in New Orleans beyond the time prescribed for their withdrawal by the treaty of April 30, 1803. The former Governor, Marquis de Casa Calvo, a man of winning manner, charming personality, and distinguished appearance, insisted that he was remaining to wind up the affairs of the King of Spain in Louisiana. Don Juan Ventura Morales, ignoring the protest of Governor Claiborne, continued to exercise his functions of Spanish Intendant on American territory, thereby making himself so obnoxious to the United States government that he was requested to depart.[19] Intense rivalry and hatred existed between Casa Calvo and Morales, and each, of course, had his following in the city.[20] In their disputes and conflicts, both appealed to Claiborne, who not only declined to interfere in their quarrels, but had to check their attempts to exercise authority in matters over which they no longer had jurisdiction. By following this policy, the Governor naturally gained the ill will of the intense partisans of both Casa Calvo and Morales. Although these two Spaniards were in personal disagreement, they were in accord in their attempts and efforts to embarrass Claiborne at every possible turn by their intrigues and intimations of a Spanish invasion.[21] Both the French and the Spanish relinquished the colony with reluctance and many of the inhabitants cherished the opinion among themselves that the United States was

[18] Claiborne to Madison, January 10, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* I, 330–31.

[19] *Id.* to Casa Calvo, October 9, 1804, *ibid.,* II, 371.

[20] *Id.* to Madison, May 24, 1804, *ibid.,* 166.

[21] *Id.* to *id.,* July 14, 1804; *id.* to Casa Calvo, October 9, 1804, *ibid.,* 249, 265, 371.

holding the place only in trust during the war and that a European peace would restore it to its ancient masters.[22]

To this New Orleans, where the people were split into parties and factions, divided in their loyalties and affections, and made the sport of foreign and domestic intrigues, came Edward Livingston, February 7, 1804.[23] Adventurous Americans by the thousands were being attracted to this city of opportunity whose population by 1808 had trebled in number, reaching 25,000, and by 1818 boasted 40,000.[24] From the backwoods of the upper Mississippi River region, from the wharves of the Atlantic seaboard towns, and from the commercial centers of the Middle Atlantic States, came the hardy pioneers, salty skippers, and shrewd traders—all answering opportunity's call. The easy-going Creole was rudely jarred by this influx of bustling Americans and was resentful of the changes that these aggressive Yankees wrought in his manner of living. With the increasing business activity, there came a corresponding increase in the demand for legal services. Lawyers were needed to draw up commercial contracts, examine property titles, settle land disputes, prepare bills of sale, and prosecute law violators. The Americans were not familiar with the prevailing civil law practices, but were accustomed to common law usage and practically all of the American lawyers had been trained to practice in common law courts. There was much litigation, and success was assured the mem-

[22] *A Faithful Picture of the Political Situation of New Orleans at the Close of the Last and the Beginning of the Present Year, 1807* (Boston, 1808), 5.

[23] Edward Livingston, "An Answer to Mr. Jefferson's Justification of his Conduct in the Case of the New Orleans Batture," in *American Law Journal* (Philadelphia), V (1814), 127.

[24] *Niles' Weekly Register* (Baltimore), XV (1819), 175.

bers of the legal profession, who, in addition to possessing the necessary personal qualifications of adaptability, thrift, and industry, as did Livingston, were trained in both the Roman and common law.

It required courage, fortitude, and a keen sense of obligation for Livingston, in his late thirties, to break the ties of youth, abandon a well-established law practice, forego the security of family and friends, and attempt to re-establish himself in a new environment. He had a financial obligation to discharge, however, and he felt that the opportunities for earning the necessary money to liquidate the debt were better in New Orleans. Even though he was more successful than he could have anticipated and although it was in Louisiana that he made those contributions to society that gave him a lasting place in history, he always considered New York his home and planned to return as soon as he could.

Chapter VII

THE FIRST YEARS IN LOUISIANA

LIVINGSTON availed himself of the opportunities to attain the success that New Orleans offered a man of his talents, training, and energy. As a man of culture, refinement, and gracious manners, it was not difficult for him to make the desirable social, business, and professional connections essential in building up a lucrative law practice. He entered into the life of the city and within a short time became acquainted with its leading citizens. He actively participated in civic and political affairs, and associated himself with the faction opposed to Governor Claiborne and the government which he represented. On the other hand, he remained on friendly terms with the followers of Claiborne and was the recipient of favors at their hands.

His alignment with the "opposition" group may have been the result of any one or more of several causes. From early childhood, Livingston had been an ardent admirer of the French, and it was natural for him to find the society of the French Creoles congenial. Many of them were antagonistic to the Governor and their attitude probably had its influence on Livingston. In addition thereto, he had always belonged to the opposition party in national politics, consequently it was more or less natural for him to continue in this opposition, even though he had contributed to the election of Jefferson.

It may have been that he had a personal resentment against Claiborne. Both of them were members of Congress in 1800, and, following the election, Jefferson had appointed each to important political positions. Claiborne's subsequent political career had been successful, while that of Livingston had not. The latter had not only lost his political influence and patrimony but had been forced to resign from office charged with a shortage in his accounts. Having sought new fields in order to recoup his fortunes, Livingston was not placed in an easier situation by finding Claiborne the dominant political factor in the community of his adoption as well as the official representative of the government to which he himself had resigned his lucrative position as a Federal officer. Then, too, realizing that his future clientele in the main must come from the Creoles, just as would any political preferment, it is not surprising that he should join in their protests against the government.

Livingston almost immediately identified himself with the leading business and professional men of New Orleans and acquired considerable influence among the inhabitants.[1] Claiborne recognized this fact when, in March, 1804, in issuing the "Ordinance Providing for the Establishment of a Bank," he placed Livingston on the committee to receive subscriptions for capital stock with John McDonogh, Pierre Sauvé, Nicholas F. Girod, Paul Lanusse, Evan Jones, Benjamin Morgan, Michael Fortier, and other outstanding business and professional men of the city.[2]

For a city of the size and financial resources of the New Orleans of that day, the plan was quite ambitious.

1 Claiborne to Madison, March 10, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 26.

2 "Ordinance Providing for the Establishment of a Bank," *ibid.,* 29–33, 42.

The bank was to begin operations when capital stock to the amount of $600,000 had been subscribed. However, this could be increased to $2,000,000. For a time it appeared to be a very popular venture as more than $100,000 of the stock was subscribed within a few hours after the books were opened. The interest soon waned, however, and even though opposition from Washington had not been encountered, the bank would not have been organized.[3] Nevertheless, it was fortunate for Livingston that he had been appointed on the committee, for it gave him the opportunity to become acquainted with the financial leaders of the community.

In the rapidly increasing American population of the city, there were many individuals not in sympathy with the governmental policies. Livingston's association with the American and Creole opposition groups and his friendly attitude toward the Casa Calvo and Morales Spanish factions caused Claiborne considerable concern. More than once the Governor complained to the Secretary of State, Madison, that Livingston and Daniel Clark "moved their hostility" to him "and by dangerous political views had injured the interest and character of the Government in the territory."

The dangerous political views to which the Governor alluded found expression in a number of public meetings held for the purpose of consolidating the various elements opposed to the policies of the government. The first of these meetings was held March 10, 1804, and was called by a certain Mr. Tupper, recently from Boston, whom Claiborne called an adventurer.[4] As it was stated, the purpose of the meeting was to discuss the grievances of the Louisianians against the American rule and to

[3] Claiborne to Gallatin, May 23, 1804, *ibid.*, 160–64.

[4] *Id.* to Madison, March 16, 1804, *ibid.*, 42–48.

formulate a petition to Congress demanding relief. Mayor Etienne de Boré presided over the assemblage which was attended by a few "Americans" and a large number of merchants from New Orleans and planters from the vicinity of the city. It was the intention of Tupper and Boré to ignore the Governor by sending the memorial direct to Congress. A friend of Claiborne, Dr. John Watkins, later mayor of New Orleans, blocked this move. Watkins prevailed upon the assembly to authorize the appointment of a committee to prepare suitable resolutions which were to be submitted for signatures at a subsequent meeting.

Although Livingston may not have attended the gathering called by Tupper, he was not only present but was also in large part responsible for the meeting of protest held June 1 of the same year. Of the Americans who participated in the deliberations on this occasion, the leaders were Livingston and Clark, who were responsible for the method of procedure and for the persistent policy which resulted in what success was attained.[5] The March, 1804, act of Congress which provided for the partition of Louisiana, the restrictions on the importation of slaves, and the deferring of the admission of Orleans Territory into the Union caused general dissatisfaction. The public meeting on June 1 was called to solidify the opposition and to induce as large a group of citizens as possible to join in petitioning Congress at its next session to repeal the objectionable sections of the act. The meeting was well attended, and among those present were some of the most influential merchants and other citizens of the city and numerous planters from the vicinity of New Orleans.[6] Among those who

[5] *Id.* to *id.*, July 1, 1804, *ibid.*, 233–34.

[6] *National Intelligencer and Washington Advertiser,* August 10, 1804.

participated most actively in the discussions were Livingston, Clark, Boré, Evan Jones, Pierre Petit, and James Pitot.[7]

Unlike the procedure followed at the meeting called by Tupper, the leaders responsible for this public gathering conducted the proceedings in a calm, deliberate manner. The consensus of the assembly, as brought out in the free and full discussion, was that Congress should be requested to repeal the three obnoxious sections of the act and that the memorial would carry more weight if it were signed by the citizens of the country parishes in addition to those of New Orleans. The assembly accordingly appointed a committee of four to draft such a petition and submit the document for the disposition of the assembly at a subsequent public meeting. If the report of the committee were satisfactory, those present at the next meeting would sign the petition and then it would be sent to the country parishes for the signatures of the leading citizens.[8] It was also agreed that Claiborne would be notified of the action taken at the meeting. In compliance with instructions, Livingston and Pitot the next day called at the office of the Governor and informed him personally and by letter of the action taken.[9]

The committee was composed of Livingston, Jones, Pitot, and Petit; but the writing of the memorial was the work of Livingston.[10] While the tone of the document was

[7] Claiborne to Madison, June 3, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 191.

[8] *National Intelligencer and Washington Advertiser,* August 10, 1804.

[9] Claiborne to Madison, June 3, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 190.

[10] *Id.* to *id.,* July 1, 1804, *ibid.,* 233; New Orleans *Louisiana Moniteur* (*Moniteur de la Louisiane*), quoted in *National Intelligencer and Washington Advertiser,* August 24, 1804.

respectful, yet Livingston wrote in clear, definite, and forceful language. Following the example of the Declaration of Independence, he listed the grievances of the people and demanded of Congress attention to their complaints, not as a favor, but as a right.[11] When the memorial was presented at the second public meeting, held July 1, it was well received. Without any discussion or amendments, the work of the committee was ordered approved and it was immediately signed by approximately two hundred and fifty "respectable merchants, planters and other respectable inhabitants" who were present and actively interested in the matter.[12]

It was the opinion of the meeting that a committee of twelve should be appointed to circulate the petition in the country parishes and secure the signatures of the leading citizens.[13] It was further agreed that the expenses incurred by those responsible for this work should be defrayed by voluntary contributions.[14] After completing their work, they should report back to the assembly for final disposition of the matter.[15] Accordingly, the committee was appointed, and Clark, Claiborne's particular aversion, was selected as one of the twelve. The committee members were successful in their mission, and upon their return to the city the third and last meeting was held on July 18. At this adjourned session Pierre Derbigny, Jean Noël Destréhan, and Pierre Sauvé were se-

[11] Claiborne to Madison, July 26, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 270; *Memorial Presented by the Inhabitants of Louisiana, to the Congress of the United States in Senate and House of Representatives Convened* (New Orleans, 1804); *Annals of Congress,* 8 Cong., 2 Sess., 1017–19.

[12] *National Intelligencer and Washington Advertiser,* August 10, 1804.

[13] *Ibid.,* August 24, 1804. [14] *Ibid.*

[15] Martin, *History of Louisiana,* 325; Claiborne to Madison, July 26, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 270.

lected as delegates to present the memorial to Congress.[16] Although the meetings of protest and the work of the delegates in Washington had very little immediate effect in influencing the action of Congress in regard to the wishes of the people of Louisiana, they gave Livingston an opportunity to enlarge his circle of acquaintances.

The provisions of the Breckinridge bill, passed by Congress March 26, 1804, providing for the first territorial government of Louisiana, were put into operation October 1, with Claiborne as governor. The members of the Legislative Council appointed by the President were Etienne de Boré, A. D. Bellechasse, Michael Cantrelle, Daniel Clark, Gasper Dubuys, Robert Dowe, Evan Jones, William Kenner, Benjamin Morgan, Julien Poydras, James Roman, John Watkins, and William Wikoff.[17] The members of the Superior Court were Ephraim Kirby, Peter S. Du Ponceau, and John B. Prevost, a stepson of Aaron Burr. The Judge of the United States District Court was Dominic A. Hall; the District Attorney, Mahlon Dickenson; and the Marshal, J. B. LeBreton D'Orgenois.[18]

Evidently for the purpose of embarrassing Claiborne and at the same time continuing the protest against the establishment of a government so manifestly obnoxious to the populace, Boré, Bellechasse, Jones, Cantrelle, and Clark refused their appointments as members of the Council. They were apparently influenced by the attitude of Livingston who pointed out that they could not with consistency aid in establishing the government against which they, as active leaders of the opposition,

[16] New Orleans *Louisiana Moniteur* (*Moniteur de la Louisiane*), quoted in *National Intelligencer and Washington Advertiser,* August 24, 1804.

[17] Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 375.

[18] Martin, *History of Louisiana,* 325.

had protested. Under date of October 8, Jones wrote to Claiborne, "I cannot therefore, with any Degree of consistency, accept of an office, under a law, of which I have from the beginning so openly exprest my Disapprobation; and which, for the happiness of my fellow Citizens, and, (forgive me if I add) for the honor of my native Country, I so ardently wish to see annulled!" [19] Claiborne realized Livingston's influence and was fully aware of the effect that the refusal of these men to accept their commissions would have on the other members, as indicated in his letter to Madison on the same date that he received Jones's letter. "Mr. Jones," wrote Claiborne, "declines, and the Reasons which influence him, will, I fear operate with all those named for the Council, who had signed the Memorial to Congress: Mr. Ed. Livingston has found that their acceptance would betray *a Dishonorable Inconsistency,* and the opinions of those who advised and wrote the Memorial, cannot fail to make an Impression." [20]

Claiborne's apprehension was not unfounded, as subsequent events proved. For several weeks the remaining members for whom commissions had been issued, while not refusing to accept them, deferred final action in the matter. Claiborne's conciliatory attitude was responsible for their final acceptance; however, a quorum could not be obtained prior to December 7.[21] There probably would have been a longer delay in organizing the Council had not the Department of State furnished Claiborne

[19] Evan Jones to Claiborne, October 8, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 350; *National Intelligencer and Washington Advertiser,* November 16, 1804.

[20] Claiborne to Madison, October 8, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 349.

[21] New Orleans *Louisiana Gazette,* December 7, 1804; *National Intelligencer and Washington Advertiser,* January 25, 1805.

with blank commissions which were filled with the names of other citizens who had signified their willingness to accept appointment.[22] To complicate the situation further, the first session of the territorial Court was not held until November 5, and then with only one judge, Prevost, present.[23] Du Ponceau had declined to accept his appointment to the bench, and Kirby, while en route to New Orleans, was detained at Fort Stoddert by serious illness [24] which later proved fatal.

Even if the zeal and ability displayed by Sauvé, Destréhan, and Derbigny in presenting the memorial to Congress failed to secure the desired results, it is probable that their efforts did eventuate in accelerating the action of that body and in influencing its decision with reference to certain provisions incorporated in the act of March 2, 1805.[25] This act, authorizing the establishment of a new form of government in the territory, not only failed to satisfy the people, but also added to the already innumerable, perplexing problems confronting the Governor. The provisions of the act with regard to the right of suffrage met with general disfavor. If the citizens were

[22] Martin, *History of Louisiana,* 326.

[23] Claiborne to Madison, November 5, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 392. The *National Intelligencer and Washington Advertiser,* December 12, 1804, stated: "A New Orleans paper says 'On the 5 ult. the court was opened by hon. J. B. Prevost. . . . Among other rules of the court it is determined that all action shall be brought by petition and that all pleadings shall be in French and English.' "

[24] Claiborne to Madison, November 18, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* III, 11.

[25] François-Xavier Martin, *A General Digest of the Acts of the Legislatures of the Late Territory of Orleans and of the State of Louisiana, and the Ordinances of the Governor under the Territorial Government* (New Orleans, 1816), 168–76; *Annals of Congress,* 8 Cong., 2 Sess., Appendix, 1674–76.

qualified and capable of selecting the twenty-five members of the House of Representatives, why should it be necessary, they inquired, for the President to select the five members of the Legislative Council from a list of the names of ten individuals nominated by a body which the people had elected? [26] The modicum of self-government granted them was not sufficiently liberal to afford much gratification, for it carried with it many checks and curbs that created general dissatisfaction. The conciliatory action of the President in appointing Bellechasse, Destréhan, Sauvé, Macarty, and Jones as members of the Legislative Council, thereby giving the Creole element a majority in this important body, failed in its purpose. The general public was still dissatisfied, and the members of the Council who were friends of Livingston were not friendly to Claiborne or to his policies.[27]

In the main, the act provided for general conformity with the provisions of the Ordinance of 1787. This Ordinance prescribed that legal procedure in civil and criminal cases should be in conformity with the common law practices. When an attempt was made to establish common law courts in the territory, the active opposition of all "ancient" Louisianians followed. The French and Spanish settlers had brought with them the Roman civil law which was in force in Louisiana. They were unfamiliar with the English common law usages and opposed the adoption of such procedure in the courts of the territory. Trial by jury was an unknown practice, and the method of instituting suits by petitions in the form of a bill in chancery grated on the ears of the old inhabitants. Because they were unable to understand

[26] Martin, *History of Louisiana*, 329–30.
[27] Gayarré, *History of Louisiana*, IV, 67–68.

these procedures, it seemed to them that they would not be able to secure justice in the courts.[28] On the other hand, to the settlers from the common law states, the civil law and its practices and applications were as much of a mystery as were the common law rules to the old inhabitants of the territory. The American settlers maintained that as Louisiana was a part of the United States, common law methods, as prescribed in the original Ordinance of 1787 from which the territorial government was descended, should be established here as in the rest of the Union. Why, they inquired, should it be necessary to promulgate the laws and proclamations in both the French and English languages, thereby making it necessary for litigants to employ two lawyers for each case, one to address the jury in French, the other in English? They maintained that by making English the legal language and the common law of England the law of the territory, the work of the Court thus simplified would be expedited, with a resultant reduction in costs.

Court action was taken to effect the change, and the populace was divided over the question along lines of nationality. As was to be expected, the Creole lawyers opposed the change, whereas the English speaking members of the bar, with the exception of Livingston,[29] insisted that the common law usages should replace those then in use. Livingston was familiar with the civil law procedure and would suffer no inconvenience if the rules in force were continued. In fact, he would have an advantage over a majority of the lawyers from the common law states provided the civil law of Spain as derived

[28] Claiborne to Madison, May 16, 1806, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* III, 299–300.

[29] "An Old Louisianian," in New Orleans *Louisiana Courier,* January 15, 1824.

from the Roman jurisprudence were retained as the foundation of the local system of laws. An array of English, Scotch, and Irish lawyers represented the proponents of the English common law system; Louis Moreau-Lislet, Etienne Mazureau, and Pierre Derbigny were among the attorneys for the opposition. The common law proponents contended that the act of Congress in question provided *totidem verbis* for the common law of England. While the talents of Moreau-Lislet, Mazureau, and Derbigny compared favorably with those of the attorneys representing the opposition, it was the logical arguments of Livingston, towering above all others in ability, that demolished the contentions of his opponents. Livingston's argument that the law already in force in Louisiana was Roman and not English and that the words "common law" were to be construed as the "common law of Louisiana" and not of England was sustained by the Court.[30] The Judge of the Superior Court of the Territory, John B. Prevost, held that the law in force being Roman, Spanish, and French, it resulted that the term common law when applied to the territory must be equivalent to the common law of the land or the civil law of the land.

Livingston's action won for him the gratitude of the Creoles. Locally, it established his reputation as a clear, forceful, and logical public speaker; and it stamped him as one of the outstanding lawyers, if not the leading attorney, in the territory.[31] The reputation which he earned, the friends he made, and his knowledge of the French and Spanish languages were responsible for his

[30] *Ibid.*

[31] Henry S. Foote, *The Bench and Bar of the South and Southwest* (St. Louis, 1876), 193. "Perhaps the highest rank at the bar of Louisiana, in the earlier days of that respected commonwealth, should be accorded Edward R. [*sic*] Livingston."

employment by the members of the Legislative Council appointed by the Governor to assist in the preparation of the civil and criminal codes for the territory.[32]

Livingston and W. Brown were the two attorneys appointed for this important task, for which they were to be paid $2,800 each.[33] Livingston's selection came as a recognition of his legal ability and was fully justified by the results of his work. His individual contribution to the new system of jurisprudence is to be found in the acts providing for the charter of New Orleans, regulation of inland navigation, and the county court law.[34] The Legislative Council accepted the work of the attorneys without amendment and officially approved the draft of the laws February 17, March 31, and April 10, 1805.[35]

With the establishment of the new government there arose many perplexing problems which gave Claiborne much concern. The position which the Governor took on many of these questions was unsatisfactory to Livingston, who opposed him vigorously, as was the case when the delegate to Congress was to be elected. The candidates for the position were Dr. John Watkins, Evan Jones, and Daniel Clark. Claiborne favored the election of his friend Watkins, to whom he referred as "the sincere friend of his Country." He feared that Clark would attempt to undermine his influence at Washington and

[32] James Workman, "Address to the Citizens of New Orleans," in New Orleans *Louisiana Gazette,* April 10, 1807.

[33] "Council Proceedings December 10, 1804," *ibid.,* December 21, 1804; "Pindar Letter No. 2," *ibid.,* September 6, 1811; Territory of Orleans *Acts,* 1808, pp. 190–92.

[34] "Pindar Letter No. 2," in New Orleans *Louisiana Gazette,* September 6, 1811.

[35] Territory of Orleans *Acts,* 1804, pp. 44–72, 122–44, 144–208.

cause him considerable trouble at home. Although not a member of the legislature that elected the delegate, Livingston actively opposed the election of Watkins and supported Clark. The native citizens of the United States in the legislature supported Watkins, and the support of the "ancient" Louisianians was divided between Clark and Jones. Clark, however, was elected, thus giving Livingston a friend at Washington.[36]

The Legislative Council, in 1805, passed an act providing for the establishment of a university for the territory,[37] but interest in collegiate education failed to advance "with the rapidity which was contemplated," [38] and it was several years before any definite results were obtained. The act provided for the appointment of Livingston to the Board of Regents of Orleans University; [39] and he contributed $200 of the $3,040 raised to establish the institution.[40]

During the first year or two of American control of the territory, the primary attention of the newcomers was given to political and commercial activities. Gradually, they came to the realization that matters pertaining to the religious life of the city could not be disregarded, and about the same time that the second territorial government was inaugurated, a movement was started to establish a Protestant church in New Orleans. By June, 1805, $2,275 had been raised for this purpose, and a

[36] Claiborne to Jefferson, May 21, 1806, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* III, 303–304.

[37] Territory of Orleans *Acts,* 1804, pp. 304–20.

[38] Claiborne, "Address to the Legislature," March 24, 1806, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* III, 277.

[39] New Orleans *Louisiana Gazette,* July 2, 1805; Territory of Orleans *Acts,* 1804, pp. 306–307.

[40] Document giving the list of subscribers is preserved in the Cabildo, New Orleans, Louisiana.

meeting of interested persons was held in the Cabildo to perfect the plans of organization.[41] By a majority vote of those in attendance, it was decided that the church organization was to be Episcopal. At the request of the organization, the legislature passed the act providing "For Incorporating a Congregation of the Protestant Episcopal Church in the county of Orleans and for other purposes therein mentioned"; and in the first section of the act Livingston was designated as one of the "body politic and corporate." [42]

For many years Livingston had been an active member of the Masonic fraternity, and in New York had been honored with the highest office of his lodge. He affiliated with the Louisiana lodge shortly after his arrival in New Orleans and almost immediately was elected Worshipful Master. In an eloquent, forceful address, he consecrated the lodge hall as a Temple to Harmony and Virtue, which made a lasting impression on his audience and added to his reputation as an orator.[43]

On June 3, 1805, Livingston was married to a refugee from the black uprising in French Santo Domingo, Madame Louise Moreau de Lassy, nee Davezac de Castera, the young widow of a Jamaica planter.[44] Prior to the revolution the family of Madame de Lassy had possessed wealth and influence, but from affluence the family was reduced to poverty. During the revolution the young

[41] New Orleans *Louisiana Gazette*, August 27, 1805.

[42] Territory of Orleans *Acts*, 1805, pp. 88–95; Georgia Fairbanks Taylor, "The Early History of the Episcopal Church in New Orleans, 1805–1840," in *Louisiana Historical Quarterly* (New Orleans), XXII (1939), 433–34. Among the names of the thirty-five subscribers listed as present at the Vestry Meeting of June 16, 1805, is Edward Livingston, 22 Rue de Conde.

[43] Hunt, *Life of Edward Livingston*, 119.

[44] Louise Livingston Hunt, *Memoir of Mrs. Edward Livingston* (New York, 1886), 31–32.

widow, seventeen years of age, lost her father, two brothers, and her grandmother; and she, her infant sister, her mother, and her brother—later known as Major Davezac—narrowly escaped being put to death. It was with difficulty that they made their way to the United States by different vessels. Later they were reunited in New Orleans, where Livingston met his future wife. Although Madame de Lassy knew no English, this was no barrier to her romance with Livingston. Mrs. Livingston was a slender, delicate, graceful woman who possessed a keen intellect, and while gracious in her manner, was inclined to be somewhat pensive and serious. She appreciated her husband, always retained an interest in his work, and made his home life so satisfactory that Livingston was able to devote his energies wholeheartedly to his legal labors and politics. For a time Livingston lived with the members of his wife's family in a house on Chartres Street [45] where, in 1806, a daughter, Cora, was born. Later they made their home at 56 Royal Street [46] where came almost every visiting celebrity, as the charm of Mrs. Livingston as a hostess was spread far and wide. The outlook for a period of peace and prosperity seemed bright for Livingston. However, a situation was crystallizing in which an attempt was made to implicate him, a situation that almost destroyed his reputation and ruined his chances for establishing himself in his new home.

Even before the new territorial government was thoroughly organized, many of the recent American settlers were clamoring for the acquisition of Mexico and were

[45] *Ibid.*

[46] *Louisiana Gazette and New Orleans Daily Advertiser,* April 26, 1810. According to Mr. Stanley C. Arthur, State Supervisor, Survey of Federal Archives in Louisiana, Works Progress Administration, New Orleans, Louisiana, the Orleans Parish civil courthouse building presently occupies this site.

openly agitating a war with Spain.[47] These adventurous spirits, according to Dr. Watkins, mayor of New Orleans, organized the Mexican Society of New Orleans for the purpose of collecting useful Mexican data in case of war with Spain.[48] Livingston was probably not a member of the Society, but he was so closely associated with certain of its leaders that it was generally felt he was identified with the organization. The feeling that he was a member of the Society, and the knowledge that he had been associated with Burr in New York and that the two had had business dealings with each other subsequent to Livingston's arrival in Louisiana, lent color to General James Wilkinson's charges that he was a party to Burr's conspiracy.

Following Jefferson's election, Burr was a marked man, but in a strategic position. He fared well enough in Washington until 1804, when the important New York election came round. When Burr's overtures to Jefferson came to nothing[49] and he failed to secure a single vote in the caucus that nominated George Clinton as Jefferson's running mate, he began to lean more strongly toward the Federalists. Timothy Pickering and the extreme New England Federalists, who were planning to take the New England section out of the Union, offered their support to Burr if he would run for governor of New York after Hamilton refused to have anything to do with their scheme. Hamilton contributed to Burr's defeat at the polls by disclosing the object for which he had been nominated. This action by Hamilton

[47] Claiborne to Madison, November 18, 1806, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* IV, 36.

[48] *Id.* to Robert Williams, February 10, 1807, *ibid.,* 120; New Orleans *Orleans Gazette,* November 1, 1805; Walter F. McCaleb, *The Aaron Burr Conspiracy* (New York, 1903), 113.

[49] Lynch, *Fifty Years of Party Warfare,* 164.

was a culmination of acts against Burr which led shortly thereafter to the duel on July 11, 1804, in which Hamilton was killed and Burr's political influence in the East was blasted.

When Burr saw his career ended in the East, he turned to the West to rehabilitate his fortunes by founding a state of his own.[50] For such an adventure he possessed many of the qualities of leadership but lacked men and money. The first he hoped to get in the West, the latter from England[51] or Spain.[52] He dealt with

[50] The Philadelphia *Aurora*, November 27, 1806, stated that Burr was purported to have asserted "that the Western States, except Ohio, were ripe for the enterprise; that he was amply provided with provisions and merchandise, had boats building at Marietta, and could have a hundred thousand dollars, in specie, at half an hour's notice." The issue of November 26, 1806, stated that he was "forming a *distinct empire* in the Western country."

[51] Burr cultivated Williamson, an English subject in New York, to utilize his services in contacting the British Minister, Anthony Merry, and through the latter communicate directly with the British government. As Williamson was favorably known to Merry, in 1803 he transmitted to the Minister Burr's "offer to lend his assistance to his Majesty's government in any manner in which they think fit to employ him, particularly in endeavoring to effect a separation of the Western part of the United States from that which lies between the Atlantic and the mountains, in its whole extent." Williamson on returning to England in 1804 delivered Merry's communication concerning Burr's proposal to the British government, which disallowed it. While anxiously waiting for a reply from Williamson, Burr seriously considered sending another messenger to London to submit a substitute plan that he hoped would receive more favorable consideration. Thomas R. Hay, "Charles Williamson and the Burr Conspiracy," in *Journal of Southern History* (Baton Rouge), II (1936), 185–87.

[52] A Philadelphia paper asserted: "we do not hesitate to offer as *our opinion,* that the movements of the Spaniards some time since and those more recently, are the results of an understanding and cooperation between the *Spaniards* and *Colonel Burr.*" Philadelphia *Aurora,* December 1, 1806. "*Yrujo* takes his departure for Europe in April; the expedition of *Burr* having been frustrated, he now returns to Madrid, like a dog with his *tail* in an awkward position." *Ibid.,* December 24, 1806.

many people—honest as well as unprincipled men and with fools. The territorial limits of the state he planned to establish cannot be fixed definitely for he revealed one project to certain individuals, and a different plan to others.[53] Some persons contend that he wanted to wrest Louisiana from the United States and set up an independent state; others, that his real purpose was to conduct a band of New Orleans adventurers on a filibustering expedition against Vera Cruz and Mexico City. According to popular opinion, the conspiracy was aimed at Louisiana; but it is possible that he hoped to secure Louisiana first and then operate against Mexico.[54] Whatever his plan was, Burr established headquarters at Blennerhasset Island, near the present Parkersburg, West Virginia, and from this base he traveled hither and thither in the West.[55]

As early as June 26, 1805,[56] he visited New Orleans, bringing with him a letter of introduction from Wilkinson to Daniel Clark, the prominent merchant and influential citizen. During his ten or twelve days' visit to

[53] "To the Yazoo therefore he held out realization of their speculations. . . . To the disaffected and disappointed [in Kentucky], he held forth the temptation of a new and separate government. . . . To others who had views and speculations in Louisiana, he held out the name of Baron Bastrop's grant. . . . To others the idea of a new government comprehending East Mexico and Louisiana under *an emperor*—which emperor he was to be!" *Ibid.*, December 2, 1806.

[54] "The *professed* design of Col. Burr, no doubt has been an attack upon Mexico, but every man who is at all acquainted with that man's *depth of design*, and qualifications for mystery, must be assured that he is not likely to disclose his *real designs* through indiscretion or excess of candor and openness of character." *Ibid.*, December 1, 1806.

[55] Richmond *Enquirer*, quoted in Philadelphia *Aurora*, November 22, 1806. The Scioto *Gazette*, November 13, 1806, quoted in *ibid.*, November 26, 1806, stated, "he was raising *forces* and purchasing up the necessary provisions and the stores for the purpose."

[56] Claiborne to Madison, June 26, 1805, in Rowland (ed.), *Letter Books of W. C. C. Claiborne*, III, 105.

the city he was received everywhere with cordiality, but there has been, and still is, a dispute as to the society most frequented by him.[57] Henry Adams maintained that he was entertained by the enemies of Claiborne; [58] Charles Gayarré contended that he conferred with the Spaniards; [59] and Wilkinson stated that he was in close contact with the members of the Mexican Society and influenced them to adopt his scheme of disunion.[60] Probably the real purpose of Burr's visit was to observe the drift of public opinion and to engage the adventurers in his filibustering enterprise against the Spanish possessions.[61] If this was the real purpose of his visit, he was successful, for at the time of his departure for St. Louis he let it be known that he proposed to return to New Orleans in October, 1806.[62]

Shortly after his departure it was generally rumored that Burr was conspiring to separate the West from the Union and that Judge Prevost, Edward Livingston, General Wilkinson, and John Brown of Kentucky were his associates.[63] Unperturbed, Burr busied himself collecting boats, supplies, and men at Blennerhasset and pre-

[57] McCaleb, *Aaron Burr Conspiracy*, 29.

[58] Adams, *History of the United States*, III, 223.

[59] Gayarré, *History of Louisiana*, IV, 81.

[60] James Wilkinson, *Memoirs of My Own Times* (Philadelphia, 1816), II, Appendix, lxxvii.

[61] Hay, "Charles Williamson and the Burr Conspiracy," in *loc. cit.*, 195–96.

[62] Claiborne to Madison, July 14, 1805, in Rowland (ed.), *Letter Books of W. C. C. Claiborne*, III, 127.

[63] "'A Kentucky paper called the *Western World,*' said the editor of the *National Intelligencer*, 'attracts very great attention here; among others, Judge Prevost, Edward Livingston, General Wilkinson, Mr. Burr, Mr. John Brown of Kentucky are charged as concerned in a *new conspiracy* against the peace of the whole Union, and with meditating a separation of this section from the eastern parts of the Union.'" Quoted in McCaleb, *Aaron Burr Conspiracy*, 181.

paring for his departure in November, 1806. In October, when the rumor became rife all through the West that Burr would attack New Orleans, he was arrested for treason in Kentucky. As no positive evidence could be produced against him, he was acquitted.[64] After the trial, he continued his preparations, but the indictment had checked the volunteering and delayed his departure. This delay was fatal for the success of his plan, as the situation in New Orleans was favorable—provided Burr had designs there. The legislature was about to meet and Wilkinson had taken his army to the Texas border, leaving the city unprotected. Burr needed men, and Wilkinson, able to take care of himself, decided to desert a failing cause. Concealing his connection with the plan, Wilkinson informed Jefferson that a conspiracy to seize Louisiana existed and hastened his return to New Orleans and noisily gave orders to make the city safe against attack.[65]

For some time after his return to the city, November 25, Wilkinson kept the people in complete ignorance as to the object of all his military preparations.[66] He urged the Governor to order the impressment of seamen, to suspend the writ of habeas corpus, and to declare martial law. Claiborne's indecision as to the proper course of action to pursue was probably due to his lack of instructions from Washington and to Wilkinson's domineering manner. He did, however, refuse to declare martial law or to implicate himself in the cases arising from military arrest. He informed Wilkinson that he could not suspend the powers of the territorial judiciary; nevertheless

[64] *Ibid.*, 191–92.

[65] James Wilkinson to Jefferson, November 12, 1806, in Wilkinson, *Memoirs of My Own Times*, II, Appendix, No. C.

[66] *A Faithful Picture of the Political Situation of New Orleans . . . 1807*, p. 14.

he issued a proclamation December 16, during the excitement following the first arrests, in which he warned the citizens against participating either in a conspiracy to overthrow the Federal government in the territory or in an expedition against the Kingdom of New Spain.[67]

Acting on his own authority and without any regard to Claiborne, Wilkinson declared martial law and proceeded to arrest and detain whomsoever he pleased.[68] His first arrests were on the evening of December 14, just about the time Burr was approaching Nashville. Without warning, Percy V. Ogden, Samuel Swartwout, and Dr. Errick Bollman were seized, their papers were confiscated, and they were denied the privilege of counsel. Wilkinson had so timed their arrest that within twenty-four hours he had Swartwout and Bollman on board ship bound for Washington beyond the jurisdiction of the court, before a writ of habeas corpus could be secured.[69]

It was Livingston who disputed Wilkinson's authority to assume dictatorial powers and challenged his right to overthrow the civil government. His connection with the fight to preserve civil liberties was the result of a request of Bollman's attorney, James Alexander, to assist in securing a writ of habeas corpus for his client. On December 15 Alexander applied for the writ but Judge William Spriggs refused to grant it then and directed the young attorney to make the motion in open court. He sought the assistance of Livingston and both attorneys appeared in court the following day and secured the writ after a short argument. Wilkinson agreed to have the writ returnable to the territorial Superior

[67] New Orleans *Orleans Gazette,* December 18, 1806.
[68] Wilkinson, *Memoirs of My Own Times,* II, 329–35.
[69] New Orleans *Orleans Gazette,* February 27, 1807.

Court December 18. On that date, accompanied by his staff and in full dress uniform, the General appeared in court to deliver in person his return to the writ in the case of Bollman.[70]

Wilkinson was enraged at Livingston and planned to destroy him for challenging his authority and daring to dispute his power. His return to the Bollman writ was in the form of a signed statement in which the General assumed full responsibility for the arrests and threatened all persons who might participate in a lawless combination. After reading the return, he preferred charges of treason against both attorneys. Livingston, he declared, had recently paid Bollman a draft for $2,000 which Burr had drawn against the accused. In addition, he held in his possession an affidavit, signed by Dr. W. Rogers, the Surgeon of the United States Navy, to the effect that Livingston had agreed to undertake an expedition against Mexico.[71]

Livingston immediately demanded that Wilkinson at least present the evidence of his own oath before leaving the Court, but the General replied that he was not prepared to make any affidavit at that moment. The judges offered to put the affidavit in form for him, but he declined their assistance and to the astonishment of the spectators, the judges agreed to call at his headquarters for it at his convenience.[72] However, Wilkinson made no attempt to produce any evidence against Livingston, even though the accused made every effort to have the General substantiate his charges of treason.

It became apparent that Wilkinson had no evidence

[70] *Ibid.*, December 18, 1806.

[71] *A Faithful Picture of the Political Situation of New Orleans . . . 1807*, pp. 19–20.

[72] *Ibid.*, 20.

against either Alexander or Livingston. Livingston adduced sworn evidence to disprove Wilkinson's charges. His acquaintance with Bollman had been slight and he did not know either Ogden or Swartwout. It was Alexander and not Bollman who was responsible for Livingston's connection with the case, and the payment to Bollman was in settlement of a debt which he had incurred while still in New York. The previous year Burr's New York agents had forwarded the notes to Daniel Clark in New Orleans for collection. He had been financially unable to make any payment on the notes prior to Bollman's arrival in Louisiana, and it was more than two months after Bollman presented the draft before settlement was made. Even then the payment was not made in cash but by an order on Samuel B. Davis, who was in debt to Livingston to the amount of the purchase price of a plantation. Livingston had made no effort to conceal the details of the transaction with Bollman, and had told Wilkinson of the affair on the day of the latter's return to the city. In mentioning the incident to Wilkinson, he had expressed surprise that Burr was indebted to Bollman, and not until the charges were made in court had the General given any intimation that he had been impressed by the transaction or had attached any significance to the statement. Dr. Rogers, the surgeon, furnished Livingston with an affidavit in which he affirmed that the statements contained in his former affidavit were based upon hearsay. Furthermore, the affiant was of the opinion that the accusations were groundless since the man who had given him the information was undependable.[73]

[73] For Livingston's communication explaining and defending his actions relative to the charges of treason made by Wilkinson, see New Orleans *Louisiana Gazette,* December 30, 1806.

All other citizens who dared to incur Wilkinson's displeasure and enmity received similar treatment. Judge John Workman was accused of being a member of the conspiracy and was placed under arrest, as was Colonel Louis Kerr, a friend of the Governor. General John Adair was seized and sent to Washington, and James M. Bradford, editor of the *Orleans Gazette,* found himself more than once in confinement. The press was controlled by Wilkinson, as all of the printers were either in the army or militia, and were told that "the soldier's back should smart for the printer's insolence." Slander became an effective weapon; and indeed few escaped suspicion.[74]

Livingston fought not only to clear himself of the charges of treason, but to preserve the civil rights of the citizens. Following the arrest of Alexander, John Williamson became associated with Livingston, and they applied to Judge Workman for writs in favor of Bollman, Ogden, and Alexander.[75] Wilkinson's replies to the writs were so evasive that Livingston pressed the matter in order to force from Wilkinson a more explicit return to the writs "at the opening of the Court on Monday next" or show why "an attachment should not be issued against him." [76] The judges—Hall, Matthew, and Workman—inquired of Claiborne whether he would assist the civil authorities against Wilkinson. The Governor gave them no satisfaction and, meanwhile, Wilkinson ignored the decrees of the Court.

On December 26 Livingston moved for an attachment against Wilkinson. It was ignored, and at this impasse

[74] *A Faithful Picture of the Political Situation of New Orleans . . . 1807,* pp. 26–27.

[75] James Workman, in New Orleans *Louisiana Gazette,* April 10, 1807.

[76] *A Faithful Picture of the Political Situation of New Orleans . . . 1807,* p. 30.

the Court paused. The sheriff was in Wilkinson's battalion, and Workman realized that an attempt to enforce the process against the General would result in exposing the Court to further indignity. On January 5 he wrote the Governor to explain the delicate situation and to inquire whether he meant to support the civil government against the military. Claiborne failed to reply and contented himself with appealing to Wilkinson to yield to the civil authorities. When a week passed without an answer from Claiborne, the Judge notified the Governor that he had adjourned court.[77]

Wilkinson attempted to use the courts in his plan of intimidation. When the Judge of the Federal District Court refused to convene court and summon a grand jury in order that he might present important accusations to it, the territorial Superior Court obligingly complied with his request. The fact that it had no jurisdiction over Federal questions did not disturb the Court; but the grand jury was not impressed by Wilkinson's accusations, and through its foreman, Evan Jones, criticized the recent court scene. In the grand jury report it was intimated that Wilkinson might have suggested the procedure. The report displeased the Court and the jury was summarily dismissed without the usual formal thanks for its labors.[78]

Workman reported the conditions to the legislature when it convened January 13, and appealed to it to protect the civil government. As that body was considering the question of suspending the writ of habeas corpus, his request received no consideration. The day following his report to the legislature, Workman and a friend of Claiborne, Colonel Kerr, were arrested, but both were released at the request of the Governor, as Wilkinson

[77] *Ibid.*, 31. [78] *Ibid.*, 36–37.

felt it inadvisable to break with him just at that time. Being unable to receive any assistance from the legislature or any support from the Governor, Workman ceased to protest and resigned his office February 23.[79]

Thwarted in his efforts to receive help from the courts, Wilkinson next turned to the legislature for assistance in his effort to establish a legal military dictatorship. By the time it convened January 13, he had prevailed on Claiborne to urge that body to suspend the writ of habeas corpus.[80] The government had a majority in both houses, and for some time it appeared that the bill would be acted upon favorably. The opponents of the bill were afraid to take any action that would incur Wilkinson's wrath for fear they would be charged with treason, probably arrested, and possibly deported. Fortunately, the question as to the authority of a territorial legislature to enact such a law was raised and the members of the legislature applied to the Attorney General for an opinion. His ruling was not satisfactory to the members, and they requested the Federal judges and the United States District Attorney for a ruling. When District Attorney James Brown gave a unanimous negative decision for the Federal court officials the bill was withdrawn from the calendar. In this way a crisis between the military and the citizens was avoided, for the persons whom Wilkinson planned to arrest were well known in the city as men marked for destruction.[81] Any attempt on the part of the General to seize these men would have led to bloodshed.

[79] *Ibid.*, 32–33.

[80] Claiborne's message to the territorial legislature [February 10, 1807], in Rowland (ed.), *Letter Books of W. C. C. Claiborne*, IV, 117–19; New Orleans *Orleans Gazette*, January 16, 1807.

[81] *A Faithful Picture of the Political Situation of New Orleans . . . 1807*, pp. 38–40.

With the failure of Burr's "conspiracy," Wilkinson's reign of terror drew to an end. When Burr learned at Natchez that the wily General had deserted him, he abandoned his followers to their fate, and, disguised, sought to escape through the woods of West Florida. When he was captured near Fort Stoddert, the whole scheme ended, and shortly thereafter Wilkinson moved on to Richmond to appear against Burr at the trial. All of the persons who had been arrested or arrested and deported were released by February 21, and within a short time there was a return to normal conditions in New Orleans.

The charges of treason failed to ruin Livingston's reputation, yet, from time to time, his political enemies attempted to use the Burr episode against him. Wilkinson's policy of indiscriminately charging with treason everyone who challenged his authority soon resulted in his accusations losing their force and effectiveness. His dictatorial manner incensed many persons and they were inclined to sympathize with those who had felt the weight of his wrath. While only a few individuals had the temerity to thwart Wilkinson, everyone appreciated Livingston's fight to preserve the civil rights and liberties. His legal services and his public stand in the contest served a valuable purpose in bringing him prominently before the public and enlarging his circle of acquaintances.

Livingston's knowledge of the civil law practices gave him an advantage over the other attorneys in the city, both the Creole and the American. Within a relatively short time he established one of the largest and most lucrative law practices in the territory. The period of general prosperity that was ushered in with the great influx of immigrants and the increase in trade and commerce resulted in a rapid rise of land values. With the

numerous transfers of property, the question of clear titles became quite important and proved to be a rich harvest for the lawyers as there was much litigation. During the period of land speculation that followed, Livingston became quite a successful trader. He felt that with the returns from his legal practice and the profits from his land deals he would soon be able to amass a fortune. He accepted land as payment for legal services, and within a short time his cash and paper profits from his real estate business amounted to thousands of dollars.

Livingston had been able to pay the draft which Burr had drawn against him in favor of Bollman, clear a tract of land of all encumbrances, and receive negotiable paper to the amount of $12,000 from the profit on a real estate transaction.[82] His speculations were not confined to lands in the lower Mississippi Valley region, but extended to property in the northern portion of Orleans Territory. While Louisiana was under the Spanish rule Baron de Bastrop had secured the grant of a tract of land, comprising about one million acres situated in what is now North Louisiana on the Ouachita River. The Baron was unable to finance the project alone, and Livingston acquired a considerable interest in the property. It appears that Colonel James Lynch of Kentucky had acquired approximately three fifths of the land, but had outstanding debts against the property which he was unable to meet. In order to sell the land and not lose the whole of his investment, Lynch was forced to include in the sale provisions relative to the payment of Livingston for his interest in the property. Burr contracted to purchase the whole tract under the stipulations that he

[82] New Orleans *Louisiana Gazette,* December 30, 1806. See Livingston's communication explaining and defending his actions relative to the charges of treason made by James Wilkinson.

was to pay Edward Livingston the amount of Lynch's purchase price, $4,000 or $5,000 in money to Lynch, and take up certain paper valued at $30,000.[83]

Livingston also acquired a large tract of land in the vicinity of Pass Christian, Mississippi, upon which the United States military forces were quartered during the war with Great Britain. The Federal troops used considerable timber from this property for the construction of barracks and houses. The land was again used by United States army troops in 1817, and on both occasions considerable damage was done to the property. Livingston attempted to secure a settlement with the War Department for damages, but an agreement could not be reached. Although not unusual, it appeared that in every instance in which he had dealings with the Federal government, there was an interminable delay in closing the transactions.[84] Finally, settlement was made when the Twenty-second Congress passed "An Act for the relief of Edward Livingston" in which the Treasurer was authorized to pay the claimant for the timber used and the other damages incurred to the property during the two periods the land was occupied by the United States troops.[85]

The property Livingston was most eager to acquire was that portion of the river front immediately below the city limits of New Orleans. He believed it to be essential to the growth of the city and that within a very short time it would be extremely valuable. He was of the opinion that if the possibilities of this property were properly exploited it held the greatest opportunity of yielding the most handsome profit of any investment he

[83] *Annals of Congress,* 10 Cong., 1 Sess., Appendix, 654–64.
[84] *House Reports,* 21 Cong., 2 Sess., No. 53.
[85] Congressional *Acts,* 1832, p. 20.

could make. While his judgment as to the value of the land was correct, it proved to be unfortunate for Livingston that he attempted to secure title to this Batture for speculative purposes.

Chapter VIII

CONTROVERSY WITH JEFFERSON

THE Mississippi River, like most meandering streams in a flat country, conforms to no permanent river bed. In its intricate course the river current flows against a bank, washes away the soil at this point, and deposits it farther downstream where the current is not so strong, usually behind some protecting point. In time, this silting-up of the river builds land which is above low-water level. This built-up land is known as a batture. For several decades prior to 1800, such a batture was being formed just below the New Orleans city limits opposite Fort St. Louis, which eventually became a suburb known as the Faubourg Ste. Marie. Owing to its location this property possessed great intrinsic value which would increase with the growth of the city. Livingston recognized this fact and became financially interested in it soon after his arrival in New Orleans.

The Batture Ste. Marie formed a part of a grant of twenty arpents fronting on the Mississippi, by fifty deep, which the French crown had made to the Society of Jesus in 1726. Later, by purchases, it was enlarged twelve more arpents on the river front.[1] In 1763 the

[1] *American State Papers, Public Lands,* II, 76. Documents 158, 159, 165, and 166 in this publication contain reprints of a large number of contemporaneous pamphlets dealing with various special phases of the controversy. For a matter of convenience, this source is cited wherever pos-

Society was suppressed in France and the property of the Jesuits in Louisiana was seized and sold for the benefit of the French crown, as Spain had not yet taken possession of the colony. The legal preliminaries to the sale of this property were begun July 14, 1763, with orders from the provincial governor as to what property was to be sold.[2] The land was divided into six plots, and the one just beyond the walls of the city at the Tchoupitoulas gate, consisting of seven by fifty arpents, was purchased by one Jean Pradelle.[3] A decade later Pradelle's widow, Alexandrina de la Chaise, transferred this property to André Renard. In his will, dated May 29, 1782, Renard bequeathed the whole of his estate to his wife, Maria Josepha Deslonde. Following Renard's death on August 6, 1785, his widow married Bertrand Gravier and by her will of November 18, 1792, left to Gravier all of her property.[4]

As early as 1788 Gravier decided to subdivide the estate of Madame Gravier, which extended from the river to the back line of the original Jesuit grant at Bayou St. John, and lay out a faubourg fronting the river. For this task he employed Carlos Laveau Trudeau, surveyor general of Louisiana. According to Trudeau's plan, dated April 21, 1788, the line ran beside the levee and extended back as far as the lake side of the present St. Charles Street. It was to be subdivided into three ranges of lots or squares separated by intervening streets paralleling the river and known today as Magazine and Camp. Madame Gravier called the prospective suburb "Ville

sible. The full list of printed pamphlets which have been consulted is given in the bibliography. See Francis P. Burns, "The Graviers and the Faubourg Ste. Marie," in *Louisiana Historical Quarterly*, XXII (1939), 385–427.

[2] *American State Papers, Public Lands*, II, 38–39.

[3] *Ibid.*, 39.

[4] *Ibid.*, 13, 25.

Gravier" but none of the property was sold during her lifetime. After her death, Bertrand, on March 22, 1794, sold to Nicholas Girod a square on the river front in the vicinity of the street that bears his name.[5] On April 12 C. F. Girod and others purchased several Batture lots [6] and on November 28, 1795, Bertrand Gravier sold 74 lots in the faubourg to Don Juan Bautista Sarpy.[7] In 1796 Gravier extended the streets and squares beyond St. Charles Street according to a plan made by Trudeau and named the whole area Faubourg Ste. Marie in memory of his wife. This subdivision contained approximately 600 lots of which Bertrand sold 107 before his death.[8] The sales were made on different terms; in a few instances the Batture was included; in others, the boundary was the levee.

In 1797 Bertrand Gravier died intestate. He was survived by four collateral heirs: a young brother, John Gravier, resided in New Orleans at 27 Royal Street with a cousin Nicholas Gravier, who was appointed administrator of the estate by the Spanish tribunal; the other three, a brother, Bertrand Gravier, Jr., a sister, Jeanne Gravier, and a niece, Jeanne Bordier, lived in France.[9] Prior to 1810 the heirs in France made no effort to protect their interest in the estate; [10] consequently, John Gravier experienced little difficulty in acquiring the entire property of his deceased brother, Bertrand. In the inventory of the Bertrand Gravier estate taken by Christoval de Armas it was stated that the extent of the lands could not "be calculated immediately" owing to the various sales of lots, but Nicholas Gravier held that the

[5] Gravier *et al. v.* Livingston *et al.*, 6 Mart. (O.S.), 342 (1819).
[6] *American State Papers, Public Lands,* II, 25.
[7] Mayor and Alderman *v.* Gravier, 11 Mart. (O.S.), 622 (1822).
[8] Gravier *et al. v.* Livingston *et al.*, 6 Mart. (O.S.), 330–31, 346 (1819).
[9] *Ibid.*, 297–301. [10] *Ibid.*, 376–77.

bounds extended "to the forks of the bayou, according to the titles." In the item of appraisement there was included the thirteen arpent tract of land with twelve Negro cabins, all valued at $2,740.[11] The mortuary proceedings following Bertrand Gravier's death further showed that "in consideration of the consent of James Philip Guinault, defender of the absent heirs, the effects, real estate, moveables and slaves, which had been inventoried as belonging to the estate" of the deceased, were "adjudged to John Gravier, at the price of the estimation." The sale was predicated upon the condition that the purchaser be obligated to satisfy the creditors of the estate. Furthermore, the record "showed that in consequence of this adjudication, John Gravier was put into possession of the plantation and other effects," included in the said inventory.[12] It was this restricting provision which later gave rise to the question of including the Batture in the inventory, for if it were not, Bertrand Gravier's other brother, sister, and niece had a legitimate claim against the Batture property. The possession of the plantation, including the Batture, had always gone with these several conveyances in the following order: Jesuits, Pradelle, De la Chaise, Renard, Madame Renard, Bertrand Gravier, and John Gravier.[13]

Prior to 1800 the Batture remained unimproved and the inhabitants of New Orleans were allowed to take sand and dirt from it.[14] The water front was used by anyone in the city for the anchorage of ships, the stacking of goods on the bank, and the removal of merchandise from the site without cost. This uninterrupted use

[11] *Ibid.*, 307; *American State Papers, Public Lands,* II, 25.

[12] *American State Papers, Public Lands,* II, 25.

[13] *Ibid.*

[14] Claiborne to Mr. Recorder and Gentlemen of the Council, August 9, 1813, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 254–56.

of the property led a majority of the people to conclude that the land was the property of the city.[15] Some of the shrewder business men recognized the future value of the land and purchased parts of it from John Gravier.

At this time it was customary for owners of property abutting the river to raise new levees to protect the newly formed land from inundation and add it to their plantations. The road was generally moved to the base of the new levee and the old road and levee were cultivated. In 1803 Gravier began to reclaim with a levee a portion of the Batture, about four hundred feet square, and completed it in the latter part of the year or early in 1804.[16] Naturally, there was a general protest when he began to enclose this land and put a stop to the public use of the property. In response to public opinion, the city corporation maintained that the Batture was public property and that the inhabitants possessed the right to use the land as formerly.[17] This claim of the city resulted in raising the question of a clear title to the property, which stopped future sales.[18]

When Livingston arrived in New Orleans in 1804, the Batture had become an object of consequence and promised to be very valuable within a short time. The controversy which had arisen between Gravier on the one hand and the city corporation and the general public on

[15] *American State Papers, Public Lands,* II, 16; Claiborne to Jefferson, October 24, 1808, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* IV, 232–34.

[16] Livingston, "An Answer to Mr. Jefferson's Justification of his Conduct in the Case of the New Orleans Batture," in *loc. cit.,* 121–22.

[17] "Conseil de Ville" (Proceedings of the New Orleans, Louisiana, City Council which have been translated, arranged, and typed by the Works Progress Administration. Typescript in the New Orleans City Hall Archives), Vol. I, Bk. I, 227.

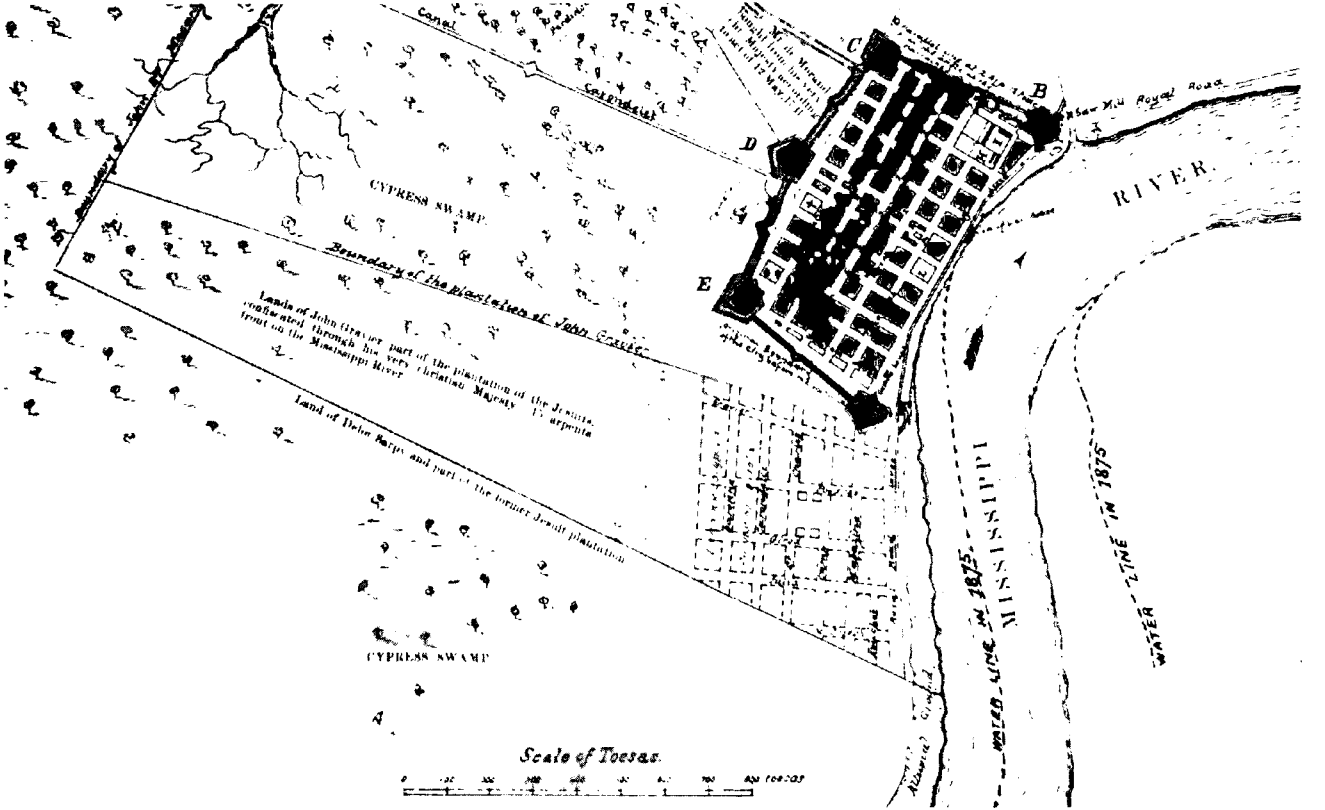
[18] Claiborne to the Mayor and Municipality, July 17, 1804, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* II, 253.

the other, directed Livingston's attention to the question. He became convinced that the property could be improved to the extent of providing wharfage and warehouse facilities for the growing city. He realized that this property offered opportunities for financial gain; if his judgment were sound, a handsome profit could be made in a relatively short time, and so he turned his attention toward acquiring an interest in the Batture.

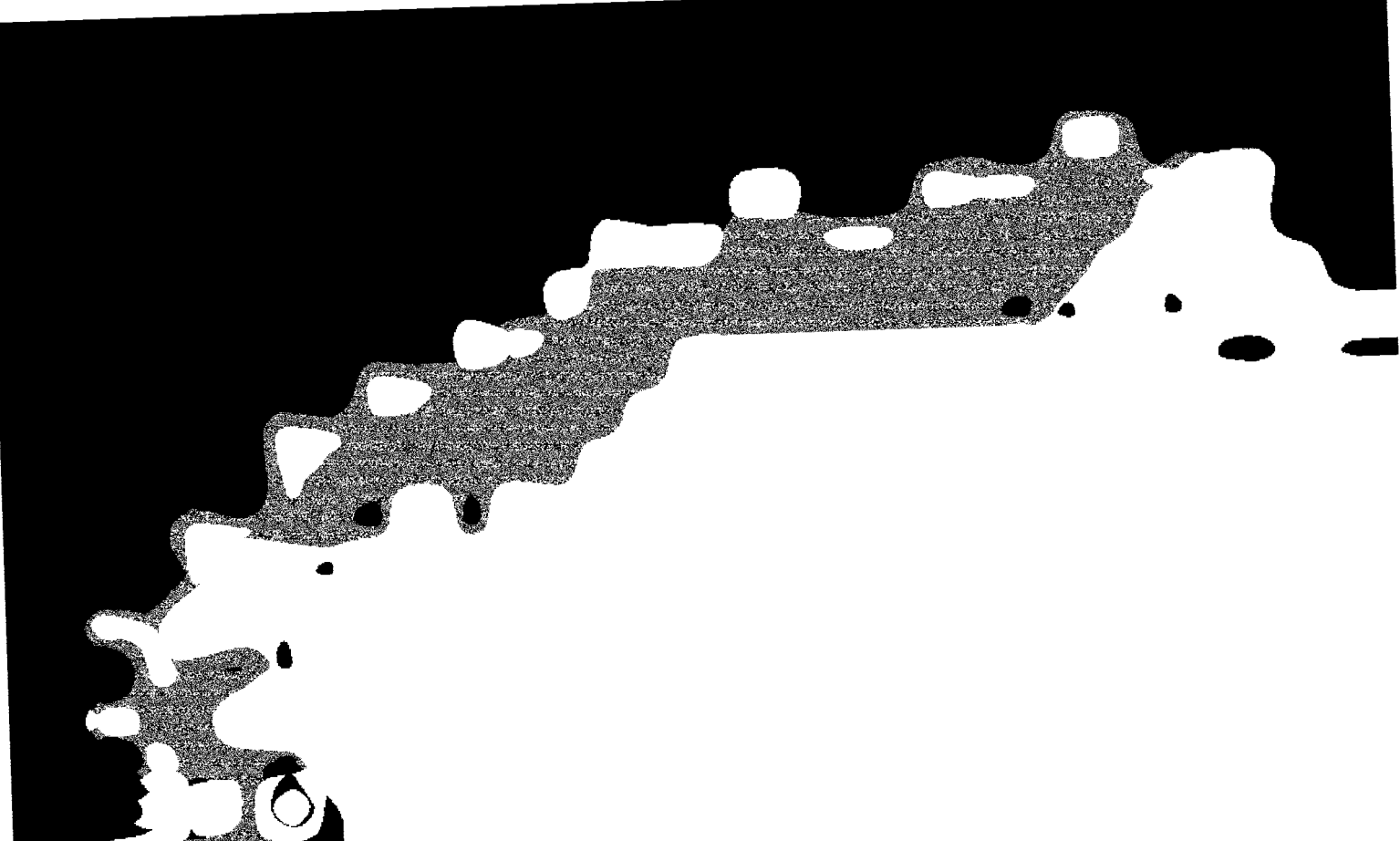
Whether it was on Gravier's initiative or whether at the suggestion of Livingston that a suit against the city was filed to establish clear title to the property remains a question. Certain facts in regard to the whole transaction are worthy of close scrutiny. Livingston's examination of the Gravier title convinced him that the Batture went with the estate unless it had been specifically included in the bills of sales of the lots sold in 1794, 1795, and 1796. He maintained that the suit was brought at the unsolicited request of Gravier, and he asserted that his own interest in the land was acquired after the Court had rendered its decision. It was from Nicholas Girod, the trustees of Peter Delabigarre, and John Gravier himself, that he had purchased his interest in the Batture for a sum of $80,000.[19] At any rate, the suit was filed and Livingston was Gravier's counsel.[20]

The general impression in the city, however, was that Livingston had originated the whole proceedings and had taken the case on a contingent fee which was to be paid in land located on the Batture. Delabigarre did bear the expense of the suit, and Gravier, on December 14, 1806, executed a deed in his favor for two thirds of the property, with the provision that Delabigarre was to pay Gravier $50,000 in case the land were recovered. Meanwhile, the land was to remain unsold and hypothe-

[19] *American State Papers, Public Lands*, II, 14. [20] *Ibid.*, 79.



PORTION OF AN 1875 "COPY AND TRANSLATION FROM THE ORIGINAL SPANISH PLAN DATED 1798," BY CARLOS TRUDEAU SHOWING THE CITY OF NEW ORLEANS, "ITS FORTIFICATIONS AND ENVIRONS."



cated for the purchase money until paid. A further provision of the agreement was that Delabigarre was to receive nothing in return in case the Court's decision was unfavorable. The deed to the property was not executed in favor of Delabigarre before witnesses or a notary and was not recorded until the day before the Court's decision was rendered.[21]

On October 22, 1805, Livingston filed a petition in the Superior Court of the territory in behalf of Gravier, claiming that his client was "the lawful owner of a certain portion of land called Batture in front of Suburb Ste. Marie." The city contested this action and selected Moreau-Lislet and Pierre Derbigny as attorneys for the defense. The case was postponed several times, but finally, on May 2, 1807, it came to trial with Judges William Spriggs, George Matthews, and Joshua Lewis occupying the bench. The unanimous judgment of the Court was rendered May 23; Judge Spriggs, in delivering the decision, stated that according to civil and Spanish law the right of alluvium was incident to the land which was formed by the river. In this instance, he ruled, alluvium had been formed adjoining the levee sufficient to be incorporated with the inheritance from Bertrand Gravier. Therefore the petition of the city was denied and the claim of John Gravier was quieted in lawful enjoyment of the property in question.[22]

As soon as the Court had rendered its judgment, Livingston and Peter Delabigarre made additional investments in batture holdings to the amount of $77,000.[23] A few days later improvements to the property, totaling $13,000, were begun by Livingston. This included the building of a new levee, the digging of a canal, and the construction of a dwelling.[24] The popular resentment at

[21] *Ibid.*, 78–79. [22] *Ibid.*, 23–33. [23] *Ibid.*, 21–22. [24] *Ibid.*, 14.

the action of the Court became very great, and the citizens, whom Livingston called a mob, drove the Negroes who were engaged in digging the canal from the site. On the following day, Livingston himself went to the property with the view of exercising his right of ownership, but he was opposed by the citizens. Each day the group assembled to prevent his use of the land and he determined to bring the issue to a head even though there might be bloodshed.[25] Finally, on Monday, August 31, Livingston, after having given public notice of his intention, resumed work on the Batture. The laborers started work about ten o'clock in the morning, but by four or five that afternoon a sufficient number of people had assembled to drive his workers away again. Governor Claiborne, who had been absent from the city for a short time, returned the following day and Livingston immediately applied to him for protection.

The Governor found the public greatly agitated over the situation.[26] Immediately following Livingston's request for protection, the City Council resolved to call upon the Governor for prompt action in prosecuting the claim of the United States to the Batture, since the corporation had lost its fight in the courts.[27] Claiborne wrote Jefferson on September 3 that he was much embarrassed as to what course to pursue. While the opposition to the decision of the Court could not be countenanced, it was so general "that I must resort to measures the most conciliatory, as the only means of avoiding still greater tumult, and *perhaps much bloodshed.*" [28] He felt that the Court was in error in quieting Gravier's claim

[25] *Ibid.*, 80; New Orleans *Louisiana Courier*, November 4, 1807.

[26] New Orleans *Louisiana Courier*, November 4, 16, 1807; *American State Papers, Public Lands*, II, 80.

[27] "Conseil de Ville," Vol. II, Bk. I, 84–85.

[28] *American State Papers, Public Lands*, II, 80.

to the property, for he was of the opinion "that the United States are the legal claimants to it." [29] Livingston's employment of United States District Attorney James Brown as one of his counsel concerned him greatly, as Brown might "feel a delicacy in prosecuting the claim of the United States, but, under existing circumstances, I have esteemed it my duty to urge his doing so."

In the meanwhile, Livingston instituted civil action against the most prominent citizens who had opposed his activities on the Batture.[30] On September 14, 1807, he again attempted to resume work and placed constables on the ground to protect the Negro laborers and to list the names of individuals who attempted to interfere. A crowd soon assembled, as usual, drove the laborers from the property, and confiscated and destroyed the list of names which the constables had prepared. The morning of the day following, September 15, Livingston informed Claiborne by letter that he intended putting his laborers to work again at twelve o'clock and he would not be surprised if the people should "change the insolence of riot into the crime of murder." [31] Thus matters had come to a crisis.

At the designated hour about a dozen white men were put to work on the Batture. Near four o'clock several hundred citizens assembled, aroused by the beating of a drum, and bloodshed probably was prevented only by the appearance of the Governor. In addressing the assemblage, Claiborne urged the people to allow the courts to handle the case. It was their duty to submit to the law, and the use of force would injure their cause. Although the Superior Court of the territory had put

[29] *Ibid.* [30] "Conseil de Ville," Vol. I, Bk. II, 262–70.
[31] *American State Papers, Public Lands,* II, 80.

Livingston in possession of the Batture, he was of the opinion that the decision was not final. Further inquiry into the right to the property must be begun by, and conducted in submission to, the government and in conformity with the laws. In his effort to preserve order, he continued, "I entreat you to retire in peace to your respective homes" for "I have already transmitted all information relative to conflicting claims to the Batture to the President and will continue to furnish him with any other information that may be furnished me." [32] Claiborne agreed to the appointment of an agent to present the grievances of the people to the President. Colonel J. B. Macarty was chosen by acclamation and, it being understood that the entire management of the affair was left to him, the citizens dispersed.[33]

Unfortunately, Livingston was without friends in official circles in Washington at this time and the territorial delegate to Congress was Claiborne's political ally, Julien Poydras. For the duration of the controversy, Poydras was active in his opposition to Livingston.[34] Both in New Orleans and in Washington, Livingston's difficulties were increased by the activities of the Governor. Shortly after the city filed suit against Livingston, Claiborne began to cultivate friendly relations with the members of the City Council and to assure them of his support with the President in their fight. On May 25,

[32] *Ibid.;* New Orleans *Louisiana Gazette,* September 18, 1807.

[33] New Orleans *Louisiana Gazette,* September 18, 1807.

[34] Julien Poydras, *A Defense of the Right of the Public to the Batture of New Orleans* (Washington, 1809); *id., Further Observations in Support of the Right of the Public to the Batture of New Orleans or Port of St. Mary* (Washington, 1809); *id., Speech of Julien Poydras, Esq. the Delegate from the Territory of Orleans, in Support of the Right of the Public to the Batture in Front of the Suburb St. Mary, Friday February 2, 1810* (Washington, 1810).

1807, the Council appointed a committee to confer with the Governor in regard to a definite plan of action, and, at the same time, it ordered an examination of the documents in the Spanish archives in Pensacola as they "might throw considerable light upon the affair and bring a favorable decision for the city." [35] On October 21 the Council, in effect, ratified the citizens' actions of September 15 by appropriating the sum of $3,000 to pay Macarty's expenses to Washington.[36] Although Claiborne had agreed to the selection of Macarty, he evidently concluded that the special agent might impair his prestige as he convinced the city fathers that such an expenditure would be unnecessary.[37]

As "the sincerest friend of the city," Claiborne assured the Council that he would support its "demands at the seat of the Federal Government." Since "it would flatter him very much" the city government, on December 5, adopted "measures to this end" and officially requested "his Excellency" to "support the city with the President of the United States in its demand." [38] A week later the Council instructed the Mayor to transmit to Claiborne "all papers and documents concerning the batture" and particularly those which established "the property right of the United States" to it, and requested that "his Excellency" forward the papers to Jefferson, "entreating the President to claim the said batture in the name of the United States before any Competent Tribunal." [39]

Livingston not only resented Claiborne's refusal to protect his interests, but complained that the Governor had further aggravated the situation by suggesting that the judgment of the territorial Court was not conclusive. He was unaware, however, that Claiborne was adding to

[35] "Conseil de Ville," Vol. I, Bk. III, 201. [36] *Ibid.*, Vol. II, Bk. I, 53.
[37] *Ibid.*, 82. [38] *Ibid.* [39] *Ibid.*, 84–85.

his difficulties by the reports and suggestions which he made to Washington. In writing to Madison, the Governor suggested that in certain instances provisions should be made for appeals from the territorial Court to the Supreme Court of the United States. He felt that it was unfortunate that the Superior Court of the territory should be the court of last resort, for suits of immense importance were frequently brought in the territory which involved many intricate questions of law, and "in determination of which all Judges may sometimes err." [40] Claiborne's recommendations were fortified by the opinions of Pierre Derbigny, formerly counsel for the city, who now was supporting the claim of the United States to the property.[41]

Livingston, on learning of the government's interest in the Batture, requested that the Attorney General "not advise a suit" until he had seen a statement from the owner of the property. The statement was sent in two parcels, but only the first of them reached its destination.[42] Meanwhile, President Jefferson had personally taken charge of the matter, and with his advent the case became one of personal persecution rather than of legal prosecution. Having once reached a decision as to his course of action, Jefferson refused to admit an error of judgment by receding from his position, even after leaving the presidency. It is difficult to explain his actions other than on the ground of personal prejudice toward Livingston. Jefferson had been displeased that Livingston had not more actively supported him in 1801, when effort was made by the Federalists to elect Burr president.

[40] Livingston, "An Answer to Mr. Jefferson's Justification of his Conduct in the Case of the New Orleans Batture," in *loc. cit.*, 135.

[41] *American State Papers, Public Lands*, II, 37–43. [42] *Ibid.*, 16.

He had not forgiven Livingston for the conduct of the office of United States attorney whereby grounds were given for criticism of his party and its appointments. Jefferson's attitude toward Livingston had not been improved by the latter's close association with the "opposition party" in Louisiana and by Wilkinson's charges of treason. In addition, Jefferson bitterly resented Livingston's interference with Wilkinson's plans to "suppress treason" in New Orleans [43] and his continued friendly relations with Burr.[44]

Following the action of the New Orleans municipality, the President took up the question with lively interest and cabinet deliberations were devoted to it. Jefferson did not follow the legal procedure of having the Attorney General file suit for the possession of the property. No examination of the title to the property was made, and the President failed to give any consideration to the fact that if the Batture did not belong to Livingston, it might be the property of the city of New Orleans. He simply assumed that it belonged to the United States; and, acting in accordance with the provisions of the Squatters' Act of 1807, he directed Secretary of State Madison to have all persons removed from the land in dispute.[45] Livingston maintained that both provisions of the act—the removal of intruders on public lands and persons guilty of raising works detrimental to public health—were judicial questions and should not be decided without an investigation and trial. He further contended that there was no possible check to tyranny if the

[43] Albert J. Beveridge, *The Life of John Marshall* (New York, 1916–1919), IV, 101–102.

[44] Livingston to Burr, July 16, 1809, in Robinson Collection (Cabildo, New Orleans), Accession No. 82.

[45] Beveridge, *Life of John Marshall*, IV, 103.

government could seize any property it thought belonged to it and reserve the right to grant or deny its permission of trial.[46]

Not only did Jefferson ignore the request of Livingston to be allowed time to submit evidence of his claim, but he proceeded against the "intruder" with dispatch. The letter of Secretary of State Madison, under date of November 30, 1807, authorizing the United States Marshal in Louisiana to eject Livingston and his laborers, was received in New Orleans, January 25, 1808. At the same time the Secretary of War ordered the commanding officer at New Orleans to assist the Governor by force of arms, if necessary, to carry out this object. The Marshal, Le Breton D'Orgenois, took possession of the property and ordered Livingston's workmen to leave the premises. Livingston had his men return to their work and secured an injunction from a judge of the territorial Superior Court against further molestation by the Marshal. That official ignored the court order and again removed Livingston and his workmen from the Batture.[47]

No longer did the two principals of the controversy confine their activities to pleadings in court. In an effort to influence public opinion, each resorted to the use of pamphlets. Each had his partisans and each had aligned with him some of the leading lawyers and jurists in the country. In Louisiana many of Livingston's friends severely criticized Jefferson's orders of ejection. On the other hand, the territorial legislature passed a resolution expressing appreciation and thanks to the President for his action.[48]

Jefferson referred the question to Congress and refused to consider Livingston's request that the contro-

[46] *American State Papers, Public Lands*, II, 17–19.
[47] *Ibid.*, 99. [48] *Ibid.*, 100–101.

versy be submitted to arbitration or judicial decision. His numerous trips to Washington to protect his interests were fruitless. Jefferson denied him an audience, and Congress ignored his petition for relief.[49] In a communication to Congress May 9, 1807, Jefferson gave a very characteristic account of his actions. In calling attention to sundry lots of land in the city of New Orleans, reserved by the government as sites for public offices, hospitals, markets, etc., he referred also, as if incidentally, to a certain plot of land known as a Batture adjoining Suburb Ste. Marie, always used by the city, but quite recently claimed by a private citizen. "The title had been adjudged not to be in the city; and it being alleged that the United States had a claim to it, measures were taken according to law, to prevent any change in the state of things and keep the ground clear of intruders." [50] He failed to state that similar action was not taken against the other owners of property in this area.

Jefferson's action in attempting to deprive a citizen of property, under the guise of an executive order, was most unworthy and indefensible. The President made no attempt to answer the irrefutably logical argument of Livingston when he asserted that "there is a circumstance which takes away even the flimsy pretext of zeal for the public interest from this transaction. Gravier's plantation was formerly part of one belonging to the Jesuits. On the suppression of the order, it was divided into six lots, and sold at the same time to different persons. Gravier holds two of these lots, the other four are in the hands of different people. The alluvion, which is more considerable on the other lots, is peaceably possessed by

[49] *Annals of Congress,* 11 Cong., 1 Sess., 323, 324–49, 418–19; 2 Sess., 1373, 1617–18, 1694–1702.

[50] *American State Papers, Public Lands,* II, 15–16.

the proprietors; yet," he pointed out, "they hold under exactly the same title that Gravier does, and are separated only by an ideal line. If the public good was the motive, if the object was to add to the property of the United States," continued Livingston, "why were not these alluvions taken as well as Gravier's? If duty impelled the President to seize on one, it was a neglect of duty," he charged, "to spare the others. If their titles be good, it was an oppression to deprive me of mine." [51]

In December, 1807, Livingston prepared for distribution his first pamphlet, *Examination of the Title of the United States to the Land Called the Batture.* In this tract he attempted to disprove the contentions of the opposition. In a second pamphlet, August 2, 1808, he charged Jefferson with committing an illegal act and subsequent thereto securing from Congress approval of his action.[52] Again, in his October 21, 1808, pamphlet, he appealed to those who would approach the question with an open mind for he was of the opinion that they would declare "that the rights of private property have been infringed; constitutional privileges broken; the judiciary degraded, and the sacred trial by jury violated without excuse." [53] In reply to Livingston, the former counsel for the city of New Orleans, Derbigny, issued a pamphlet in which he presented his arguments supporting the claims of the United States government to the Batture.[54] This effort in turn brought forth a reply from Peter S. Du Ponceau, an attorney of Philadelphia, who rendered valuable assistance to the claimant in the fight.[55] Livingston followed with his *Case for the Consideration of the Counsel,* in which he reviewed the

[51] *Ibid.,* 17. [52] *Ibid.,* 71. [53] *Ibid.,* 19.
[54] *Ibid.,* 37–43. [55] *Ibid.,* 59–69.

history of the Batture and propounded thirteen questions relative to ownership of the land.

Finally, after a long silence, the Sage of Monticello, on July 31, 1810, issued a pamphlet of ninety-one pages entitled, *The Proceedings of the Government of the United States in Maintaining the Public Right Against the Intrusion of Edward Livingston. Prepared for the Use of Counsel by Thomas Jefferson.* In this treatise he offered explanation for his action three years previous and accused Livingston of selfishly encouraging Gravier to institute court action for the acquisition of the land. The former President made a mistake to challenge and provoke such an opponent as Livingston. Wearied with his futile attempts to secure relief from either President Madison or Congress, he made a reply to Jefferson and completely destroyed Jefferson's arguments of defense. He charged that the former President had more than once used a mistranslation to bolster up his case,[56] and suppressed a portion of the report of the surveyor, Carlos Trudeau.[57] In the meanwhile, the indefatigable Livingston brought suit against the United States Marshal in the District Court in New Orleans for the recovery of his property from which he had been formally expelled.[58] Soon thereafter he filed suit in the Federal Circuit Court at Richmond against Jefferson for $100.000 damages that had resulted to his land from "tres-

[56] Livingston, "An Answer to Mr. Jefferson's Justification of his Conduct in the Case of the New Orleans Batture," in *loc. cit.*, 157–58.

[57] *Ibid.*, 206.

[58] Livingston *v.* D'Orgenoy [*sic*], 6 Mart. (O.S.), 87–96 (1819). Martin stated, "The following case has excited so much interest and curiosity, that it has been deemed proper to be inserted, although the original plan of this work did not extend to cases determined by the District Court of the U. States."

pass." [59] He did not enter suit at New Orleans for the reason that the defendant, not being a resident of Orleans, was "not amenable to the jurisdiction of the courts of the territory." Furthermore, a process could not be served upon Jefferson so long as he did not enter Orleans Territory.[60]

Livingston's declaration contained eight counts in which he based his right of action of trespass upon an interest in the land and sought to obtain a judgment imposing a personal liability upon Jefferson.[61] In the first count, in which he claimed damages in the sum of $60,000, the plaintiff charged that on January 25, 1808, the defendant "with force and arms . . . did break and enter" the Batture Ste. Marie. Property, goods, and chattels to the value of $10,000, he contended, were destroyed and 200,000 cartloads of dirt and sand worth $50,000 had been removed from the premises which in addition had "greatly injured" the property. The $40,000 loss which he claimed in the remaining seven counts was based upon similar charges. Much emphasis, however, was placed upon the defendant's action which had prevented the plaintiff from saving the Batture soil from inundation and from removal by citizens of New Orleans.

When Jefferson learned of Livingston's action he was much concerned and greatly alarmed.[62] With an anti-

[59] **Livingston *v.* Jefferson, 15 Fed. Cas. 8411 (1811).**

[60] Austin W. Scott, *Fundamentals of Procedure in Actions at Law* (New York, 1922), 1–33. Professor Scott states that this case is important for it established a precedent that has been followed almost universally in the American courts, the main exception being Louisiana where the common law does not prevail.

[61] **Livingston *v.* Jefferson, 15 Fed. Cas. 8411.**

[62] Beveridge, *Life of John Marshall*, IV, 103. Beveridge's treatment of Jefferson's activities in regard to the judiciary has been followed to a large extent.

Republican political complexion of the Federal Court, the former President was worried about the treatment he would receive at the hands of that body. Still vivid in his memory were the events in connection with the repeal of the Judiciary Act of February 13, 1801, which had resulted in the "Midnight Judges." Equally clear was his remembrance of the details of the congressional act of April 29, 1802, which he as president had signed, whereby Federal circuit courts were to be "composed of one justice of the Supreme Court and the judge of the district, in which the said court" was held.[63] This provision of the law was particularly disturbing to him for the justice assigned to the Virginia–North Carolina circuit was his kinsman, John Marshall. The mutual dislike that existed between Jefferson and Marshall had led the former President to be most critical and censorious of the Chief Justice. Jefferson had written that in the hands of Marshall "the law is nothing more than an ambiguous text, to be explained by his sophistry into any meaning which may subserve his personal malice." [64] The fact that Marshall was fully aware of such derogatory statements caused him further alarm, as he realized his fate would rest in the hands of the Chief Justice.[65]

[63] *Annals of Congress*, 7 Cong., 1 Sess., 1160; Felix Frankfurter and James M. Landis, *The Business of the Supreme Court, A Study in the Federal Judicial System* (New York, 1928), 30–36.

[64] Jefferson to Madison, May 25, 1810, in Paul L. Ford (ed.), *The Works of Thomas Jefferson* (New York, 1904–1905), XI, 139–41; *id.* to John Tyler, May 26, 1810, in Lyon G. Tyler (ed.), *The Letters and Times of the Tylers* (Richmond, 1884–1885, 1896), I, 247–48.

[65] Andrew C. McLaughlin, *A Constitutional History of the United States* (New York, 1935), 235. The Judiciary Act of 1789 provided that "circuit courts were to have original jurisdiction, concurrent with the courts of the states, of all suits of a civil nature at common law or in equity, where the sum involved was more than five hundred dollars, and the suit was between a citizen of a state in which the suit was brought and a citizen of another state." *Ibid.*

About this time a situation developed which gave Jefferson an idea as to a way out of his dilemma, and, without considering the ethics of the question, he availed himself of the opportunity. Judge Cyrus Griffin, justice of the Federal District Court of Virginia, was "in a low state of health" from which he was not expected to recover. Governor John Tyler wanted the position and wrote to Jefferson, adroitly requesting a recommendation to President Madison for his appointment "in case of accidents." [66] With political astuteness, he proceeded to criticize Marshall and condemn him for opposition to the War of 1812.

This was too good an opportunity to let pass, and Jefferson immediately wrote to President Madison that from what he could learn, "Griffin cannot stand it long, and really the state has suffered long enough by having such a cypher in so important an office, and infinitely the more from the want of any counterpoint to the rancorous hatred which Marshall bears to the government of his country, & from the cunning and sophistry within which he is able to enshroud himself. It will be difficult," he was confident, "to find a character of firmness enough to preserve his independence on the same bench with Marshall. Tyler, I am certain, would do it." [67] After reciting other reasons why Tyler would be an excellent appointment, Jefferson stated, "You have seen in the papers that Livingston has served a writ on me, stating damages at 100,000. D." A little further he pointedly informed the President that he might be forced to summon as witnesses his "associates in the proceedings"

[66] Tyler to Jefferson, May 12, 1810, in Tyler (ed.), *Letters and Times of the Tylers*, I, 244–47.

[67] Jefferson to Madison, May 25, 1810, in Ford (ed.), *Works of Thomas Jefferson*, XI, 139–41.

which of course would include Madison. With no attempt at subtlety, he concluded this amazing letter by reminding Madison it was "little doubted that . . . [Livingston's] kno[w]lege of Marshall's character has induced him to bring this action. His twistifications of the law in the case of Marbury, in that of Burr & the late Yazoo case," he contended, "shew how dexterously he can reconcile law on his personal biases; and nobody seems to doubt that he is ready prepared to decide that Livingston's right to the batture is unquestionable, and that I am bound to pay for it with my private fortune."

In answering Tyler's letter, the day following the communication to the President, Jefferson stated that he had "laid it down as a law never to embarrass the President with any solicitations." Nevertheless in his case he had "done it with all my heart, and in the full belief that I serve him and the public in urging that appointment." [68] Even should Griffin be considerate enough to die in time for Tyler to be appointed before the case came to trial, Jefferson's anxiety would not be at an end. If the case should go to a jury, it would be impossible to tell what the verdict would be with Marshall delivering the instructions. As the case might be appealed to the Supreme Court, Marshall would see to it that he received an adverse decision from that body unless the vacancy caused by the death of Associate Justice William Cushing, September 10, 1810, were also filled by a man on whom Jefferson could depend.

In December Judge Griffin accommodated Jefferson by passing from the scene of action, and in due time, John Tyler, the father of a later President of the same

[68] *Id.* to Tyler, May 26, 1810, in Tyler (ed.), *Letters and Times of the Tylers*, I, 247–48; *id.* to *id.*, May 26, 1810, in Ford (ed.), *Works of Thomas Jefferson*, XI, 141–43 n.

name, was appointed to succeed him. Jefferson was then able to devote his attention to the appointment of Cushing's successor. As Cushing had presided over the New England circuit, the new Justice must come from that area. With the selection of Cushing's successor, the Republican party would have a majority of the Court for the first time since its organization, but it was difficult to find a Republican lawyer from that district who was fit to serve on the bench. As soon as Jefferson learned of Cushing's death, he wrote Gallatin that "the event is a fortunate one, and so timed as to be a Godsend to me." He heartily recommended his former Attorney General, Levi Lincoln, for the position.[69] After allowing time for Gallatin to convey his message to the President, Jefferson wrote directly to Madison. Following his congratulations to the President upon several matters, he came to "another circumstance of congratulation is the death of Cushing." Continuing, he recommended Lincoln and suggested that if he were unavailable Gideon Granger would be an admirable second choice. As far as Joseph Story was concerned, Jefferson concluded, he not only "deserted us on . . . [the embargo] measure," but also was "unquestionably a tory" and "too young." [70] Thus, the great champion of civil liberties, the founder of the Republican party of reform, the former Chief Executive of the nation stooped to a manipulation of the appointments of the Federal judiciary for selfish ends. This great exponent of the theory of political equality attempted to prostitute justice by stripping a citizen of his property and denying him the privilege of a fair trial.

Madison endeavored to comply with Jefferson's de-

[69] *Id.* to Gallatin, September 27, 1810, in Ford (ed.), *Works of Thomas Jefferson,* XI, 152–54 n.

[70] *Id.* to Madison, October 15, 1810, *ibid.,* 150–52.

sires. He offered Cushing's place to Lincoln, who declined it because of approaching blindness, and his recommendation of Granger failed to secure confirmation by the Senate. That body proved somewhat obstinate and refused to confirm the nomination of Alexander Wolcott. John Quincy Adams, who had been read out of the Federalist party and who was minister to Russia, was appointed, "but Adams preferred to continue in his diplomatic post, and refused the appointment." Through the process of elimination Joseph Story became the only possible choice.[71] On November 18, 1811, the Senate approved Madison's recommendation and Story became an associate justice of the Supreme Court of the United States. While not enthusiastic about the appointment Jefferson could breathe more easily, but he still was apprehensive of the final outcome of the case. Although declaring after the trial that he "had a strong desire that the public should have been satisfied by a trial on the merits," [72] Jefferson acquiesced in the plan of his counsel "to prevent the case from coming to trial if they could." He prepared for their use the exhaustive digest of his version of the facts and his views of the law provided they were unable to have the case dismissed on the grounds of "no jurisdiction."

The case was unique in that for the first time in the history of the United States the question was raised as to "whether action to recover damages for trespass to lands is local or transitory." [73] The suit aroused keen interest throughout the country, and especially did the lawyers manifest concern as to the outcome. Tyler was

[71] Beveridge, *Life of John Marshall*, IV, 110.

[72] Jefferson to William Wirt, April 12, 1812, in Ford (ed.), *Works of Thomas Jefferson*, XI, 226–37.

[73] Scott, *Fundamentals of Procedure in Actions at Law*, 14.

so ill when the case came up for hearing that he was hardly able to attend court, but he remained through the entire session as he had "determined to give an opinion." The only question before the Court was that of jurisdiction. Since no American precedent existed it was difficult not to follow the English precedents which held that "an action to recover damages for injuries to the land can be brought only where the land lies." [74] Both Marshall and Tyler agreed that the Court had no jurisdiction, but Marshall did so with great reluctance. Tyler reported to Jefferson after the trial that Marshall would have transferred the case to the Supreme Court if he had not insisted upon a decision.[75]

A clear index as to the character, mental caliber, and judicial temperament of each of the two judges was revealed in their respective written opinions. Both concurred with the English precedents: but Tyler, who was obligated to Jefferson, did so with keen delight; while Marshall, who detested his cousin, did so with deep regret.[76] "This case, although so ably argued on both sides," Tyler stated, "affords but a single question; and that may be drawn with a narrow compass; and while I freely acknowledge how much I was pleased with the ingenuity and eloquence of the plaintiff's counsel, I cannot do so much injustice to plain truth, as to say, that any conviction was wrought on my mind, of the soundness of the arguments they exhibited in a legal accept-

[74] *Ibid.*, 3.

[75] "I received the favor of your pamphlet on the subject of the beach of New Orleans and read it with great delight. . . . Your streams brought from so many fountains, like the great Mississippi, so strong and irresistible, that Livingston, and his bold but corrupt enterprise, are swept together into the Gulf without hope of redemption." Tyler to Jefferson, May 17, 1812, in Tyler (ed.), *Letters and Times of the Tylers*, I, 263–64.

[76] Livingston *v.* Jefferson, 15 Fed. Cas. 8411.

ance. It is the happy talent of some professional gentlemen, and particularly of the plaintiff's counsel, often to make 'the worse appear the better cause.' . . . These arguments and this eloquence, however, have been met by Herculean strength of forensic ability, which, I take pride in saying, sheds luster over the bar of Virginia." Marshall, however, regretted "that the inconvenience to which delay might expose at least one of the parties, together with the situation of the court," prevented him "from bestowing on this question that deliberate consideration which the very able discussion from the bar would seem to require—but" he had "purposely avoided any investigation of the subject previous to the argument" and consequently "must be content with a brief statement of the opinion" he had formed.

"In considering the jurisdiction of the circuit courts" Marshall stated in his opinion that it "depends on the character of the parties, and that only the court of the district in which the defendant resides, or is found, can take jurisdiction of the cause." In a "court so constituted," he continued, "the argument drawn from the total failure of justice, should a trespasser be declared to be only amenable to the court of that district in which the land lies, and in which he will never be found," appeared to him "to be entitled to peculiar weight." Then turning his attention to the defendant he questioned Jefferson's action in avoiding a trial on the merits of the case, virtually accused him of availing himself of such a technicality, and pointed out that prior to this time the former President had always denounced such a practice. By the employment of this subterfuge, Jefferson had prevented a trial whereby the injured party might have "a clear right without a remedy." Clearly, Marshall indicated that this condition was certainly true "in a case

where a person, who has done the wrong, and who ought to make compensation, is within the power of the court. . . . I have not yet discerned a reason other than a technical one, which can satisfy my judgment" for evading trial in order that justice may be denied. Since "other judges have felt the weight of this argument and have struggled ineffectually against" such practices and there seems to be no remedy, "I must submit to it." [77]

The outcome of the trial was most fortunate, almost lucky, for Jefferson. There is little doubt as to what the decision would have been had the case been decided upon its merits. This is clearly indicated not only by the emphatic statements of the Chief Justice, but also by the opinion which the renowned jurist, James Kent, chief justice of the Supreme Court of the state of New York, expressed in his letter to Livingston on this subject. Being sensitive to public opinion, Jefferson was anxious for the public to think he had pursued the proper course, for he was aware that the motive of his action was being questioned. He therefore carefully prepared his statement of the controversy in which he asserted that since the suit had been decided on the grounds of "no jurisdiction," he desired to explain the points of controversy. The publication of Jefferson's statement was timed to appear just when Livingston's suit against the United States Marshal in New Orleans, still pending before the Court, was approaching a close. Following the publication of Livingston's 195-page answer to Jefferson, Kent wrote to express to Livingston his sympathy over the shameful persecution that the Louisianian had been subjected to by the executive authority of the United States. As he had studied the briefs submitted by both contestants, he would "be as willing to subscribe

[77] *Ibid.*

. . . [his] name to the validity of your [Livingston's] title and to the atrocious injustice you have received, as to any opinion in Johnson's Reports." [78]

Finally, August 4, 1813, the United States Court of the Orleans District rendered its decision in the case of "Edward Livingston against Le Breton D'Orgenois, the United States Marshal." The decision declared "illegal" the interference of President Jefferson in the Batture case and directed the claimant to be restored to the possession of the property.[79] The decision was rendered in the midst of the war agitation, and the population of New Orleans was thrown into a ferment. To the possibility of invasion by the British was added the loss of the use of the Batture for wharfage privileges and as a source of supply of sand and soil for road and levee construction.

The Marshal refused to appeal from the court decision, and the New Orleans City Council passed a resolution requesting the Governor to appeal the case in behalf of the city and state on the grounds that the rights of both were infringed in the premises. In reporting the affair to the former President, Claiborne informed him of his intention of enjoining Livingston in the state courts from exercising any acts of ownership over the property or in any way obstructing the navigation of the Mississippi River. Livingston, he continued, had "found means either to neutralize or to make active partizans of most of the lawyers in the State." But, he felt that they were fortunate in securing the support of Attorney General François-Xavier Martin, Moreau-Lislet, and Field-

[78] James Kent to Livingston, May 13, 1814, in Hunt, *Life of Edward Livingston,* 182.

[79] Livingston, "An Answer to Mr. Jefferson's Justification of his Conduct in the Case of the New Orleans Batture," in *loc. cit.,* 290.

ing Turner in their fight against Livingston, since they might be able "to maintain the rights of the public." [80]

Upon the application of Attorney General Martin, the Parish Judge, James Pitot,[81] at first granted an injunction, but later dissolved it on the grounds that until it was shown that Livingston had committed some act which deprived the citizens of the use of the Batture or erected some works thereon which obstructed the free navigation of the Mississippi, judicial interference would be premature and improper. That Claiborne was almost as persistent as Jefferson in his effort to deprive Livingston of his property was clearly revealed in his letter to the Louisiana Representative in Congress, Thomas Bolling Robertson. "Thus the case rests for the present," he informed Robertson, "nor has Mr. Livingston yet thought proper to prosecute the Mayor of New Orleans, or the inhabitants who are in the habit of taking as formerly *Dirt* from the Batture." Continuing, he expressed the desire to have the title to this property finally and definitely settled, but was in a quandary as to the best manner of getting the question fairly before the courts.[82]

With the dissolution of the injunction, it appeared that Livingston's labors would reach fruition by his

[80] Claiborne to Jefferson, August 14, 1813, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 258–59.

[81] "You will have heard of the decision of Judge Hall in the suit brought by Livingston Vs. LeBreton D'Orgenoy [*sic*]. The interference of Mr. Jefferson is declared illegal and the Plaintiff is to be restored to his possession. . . . Messrs. Martin, Moreau Lislet and Turner, are employed to prevent all intrusion upon the Batture, & to this end, application has been made to Judge Pitot, to enjoin Mr. Livingston against exercising any act of ownership over the same or erecting thereon any kind of works." *Id.* to Julien Poydras, August 16, 1813, *ibid.,* 260–61.

[82] *Id.* to a Representative in Congress [Thomas Bolling Robertson], September 4, 1813, *ibid.,* 264.

deriving a handsome profit from the sale of his Batture property. He was careful to avoid the performance of any act which Judge Pitot had ruled was justifiable grounds for the granting of an injunction. Not only were the citizens permitted to remove soil from the Batture, but he made an effort to reach an amicable understanding with the city corporation. He stated to that body that he had always desired to live in peace with his fellow citizens and render them every service in his power. As evidence of this, he offered to donate to the city that part of the Batture lying between the levee and the city boundary.[83] When his offer was rejected "on account of the expense of making the levee," he informed the City Council of his willingness to construct one at his personal expense.[84]

Again in 1817 Livingston and the heirs of Delabigarre made an attempt to reconcile the interests of the city with their rights. In the proposal they agreed: to convey to the city all that part of the Batture lying between the city and the continuation of Poydras Street; to donate two hundred feet on each side of Julia Street at the levee and guarantee the erection of a market building on the property at a cost of not less than $10,000 within two years; to widen Tchoupitoulas Street to sixty feet and open it to the river at intervals of not less than three hundred feet; to construct at their expense a levee sixty feet from the low-water mark which could be used by the general public; and to release all action they might have against the corporation for any disturbance, trespassing, or any other cause. In return, the city was only requested

[83] Livingston to Felix Arnaud, Recorder, August 1, 1816, in No. 609 of Letters, Petitions, and Reports to the Mayor and City Council of New Orleans, in Record Book, 4089 (Cabildo, New Orleans).

[84] *Id.* to the Mayor of New Orleans, October 15, 1816, *ibid.*

to guarantee not to pass any laws or ordinances which would prevent boats from landing opposite their property and give assurance that no effort would be made to prevent the owners from enclosing and improving the property that they retained.[85] As a further effort to conciliate the city authorities, on April 7 of the following year Livingston agreed to place the levee one hundred feet from the low-water mark instead of sixty feet and to donate to the city the land lying between the proposed levee and the river.[86] After some delay the City Council finally accepted the propositions September 20, 1820.[87]

It appeared now that no further question as to title could be raised. The territorial Superior Court had ruled that the title to the Batture was not vested in the city; the Federal District Court had ordered that Livingston be put in peaceful possession of the land; the Parish Court had refused to grant the city an injunction to estop Livingston from occupying the property; and finally, the city, by its acceptance of Livingston's offer of compromise, had practically renounced all claim to the Batture. But litigation was to follow and it was not until 1823 that Livingston obtained a sufficiently clear title to a portion of the land to permit him to dispose of it.[88] Litigation kept a greater part of the property tied up

[85] *Id.* to the Recorder, March 8, 1817, *ibid.*, No. 614; *Louisiana Gazette and New Orleans Mercantile Advertiser,* March 11, 1817.

[86] Livingston to Mayor of New Orleans, April 7, 1818, in No. 626 of Letters, Petitions and Reports to the Mayor and City Council of New Orleans, in Record Book, 4089.

[87] Louisiana *Acts,* 1850, p. 197. Act No. 257 states, "the compromise in relation to said Batture, entered into between the Mayor, Aldermen and inhabitants of the city of New Orleans and Edward Livingston and others, before Hughes Lavergne, Notary Public, on the twentieth of September, eighteen hundred and twenty."

[88] Petition of Livingston to the Mayor and City Council of New Orleans, 1823, in No. 687 of Letters, Petitions, and Reports to the Mayor and City Council of New Orleans, in Record Book, 4084.

until many years after his death,[89] and it was with difficulty that his widow was able after a long delay to realize anything on the residue of this investment.[90]

One of the points which Livingston had used so effectively in his arguments to substantiate his claim of ownership to the Batture was later used against him. Benjamin Morgan, an owner of one of the lots in Suburb Ste. Marie, filed suit against Livingston and Delabigarre for possession of the Batture in front of his lot.[91] The courts decided in favor of the plaintiff, ruling that the alluvium adjoining the land was a part of the property. As the owner of the lot ran the risk of losing the land by the encroachments of the river, he should benefit by the additions thereto. The road lying between the plot of land and the levee did not prevent this, and the title, the Court ruled, "meant front to the river." [92]

The damage which Jefferson had done Livingston was not liquidated in full when the latter was put in possession of the Batture. Jefferson had shown a paternal interest in the welfare of the brother and sisters of John

[89] Randell Hunt to Mrs. Livingston, December 30, 1850, in Hunt, *Memoir of Mrs. Edward Livingston*, 157–59. Hunt succeeded in placing the Batture claim in a position that enabled Mrs. Livingston to enter into a compromise which would secure a portion of the property withheld and appropriated by the city. This was effected by the passage of Act No. 257 of the legislature (1850) referred to above, which repealed the compromise entered into by the city and Livingston, thereby making it possible for Mrs. Livingston to participate in the proceeds accruing from the sale of the property.

[90] *Id.* to *id.*, April 15, 1853, *ibid.*, 160. In writing to Mrs. Livingston, Hunt stated: "the Batture suit is at length at an end, so far as the claim of the front proprietors is concerned. The accounts of the battures are now being made out, and the notary promises them and the money on Thursday next. I do not doubt but that this word 'batture' which you have so long regarded with horror, will prove the means of adding more comfort in your old age."

[91] Morgan *v.* Livingston *et al.*, 6 Mart. (O.S.), 19–256 (1819).

[92] *Ibid.*, 251.

Gravier who lived in France. He maintained that if the property had descended from Bertrand Gravier, it should be divided equally with the other heirs. He stressed the point that the Batture was not comprised in the adjudication and therefore remained the property of the co-heirs. Since this point had been given so much publicity, it was to be expected that the absentee brother, sister, and niece would be prevailed upon to file suit to recover their shares of the inheritance.

The sharp practices employed by John Gravier to acquire the entire estate of Bertrand Gravier to the exclusion of the collateral heirs in France were questionable, if not dishonest.[93] A none too cordial relationship had existed between the two during the last days of the elder brother, and, immediately following Bertrand's death, John Gravier filed a proceeding in his deceased brother's succession in which he alleged that the estate was indebted to him to the amount of $15,045. As proof of this allegation he produced a note dated in 1796 that bore the signature of Bertrand Gravier, which was supported by an "account current" executed by the deceased on the same date the note was made.[94] In order to secure his interest John Gravier forced the sale of Bertrand's properties and at the auction he bought in the entire estate for the sum of $34,338.75.[95] The sale was consummated on the condition that John Gravier obligate himself to pay all the debts of his deceased brother. He later maintained that he had not only discharged the obliga-

[93] Burns, "The Graviers and the Faubourg Ste. Marie," in *loc. cit.*, 407–10. Certain information concerning the Gravier case was drawn from the above article but the primary sources have been consulted and are cited below.

[94] Gravier *v.* Gravier's Heirs, 3 Mart. (N.S.), 215–16 (1825). The note was for $15,000.62½.

[95] *Ibid.*, 206–207.

tion of debts currently listed but that he had also paid other debts which subsequently had been filed against the estate, in consequence of which he claimed that the estate was "indebted to him in the sum of $38,665 10 3-4 cents." [96] His actions, however, appeared to indicate that he intended to defraud the heirs in France of their shares of the estate. To forestall any action which would protect their interest in the inheritance, John Gravier filed suit against them in the courts in New Orleans. The proceedings which followed were irregular and questionable.

The absent heirs received no citation of the sale of the entire estate to John Gravier for the purpose of liquidating the alleged debt due him by Bertrand; there was no attempt to secure the appointment of an individual to defend the property of the absent heirs; a "defensor" had simply served notice on the absent heirs formally requiring their presence, and had then acquiesced in the decree of the Court whereby John Gravier was awarded the entire estate.[97] The defensor represented only the brother and sister, for Jeanne Bordier, the daughter of a second sister of Bertrand, predeceased, who lived in Bergerac, France, was not notified. John Gravier later maintained that he knew nothing of her existence at that time.

As the Batture litigation attracted widespread attention and interest, it was not surprising that the heirs in France learned of their valuable inheritance in New Orleans and of John Gravier's actions incident to his purchase of the entire estate in 1797. As early as 1810 the guardian of the minor heir, Jeanne Bordier, instituted suit in New Orleans against John Gravier and secured formal judgment which required the uncle to render an

[96] *Ibid.*, 207.

[97] Gravier *et al. v.* Livingston *et al.*, 6 Mart. (O.S.), 298–99 (1819).

accounting to the niece.[98] In 1817 Pierre Derbigny advised the absent heirs of a recent court decision which decreed that the valuable tract of land, not included theretofore in the inventory of Bertrand Gravier's estate, was now made a part thereof, and "the three-fourths of it were theirs." He further informed them that John Gravier had sold a large part of the Batture in front of the original thirteen acres although he was entitled only to a fourth interest therein.[99] The year following, all three heirs in France jointly filed suit for their respective interests in the Gravier estate as inventoried in 1797, charging that they had been deprived of their rights by the fraudulent acts of John Gravier.[100]

The suit of Gravier *et al. v.* Livingston *et al.* was filed in New Orleans for the absentee co-heirs of Bertrand Gravier during the month of April, 1818, by the attorney, Adolphe Mazureau.[101] He contended that John Gravier had unlawfully taken possession of the entire estate in 1797 and had sold the portion of the property belonging to the absent heirs as well as his own. He alleged that the estate consisted of a number of unsold lots in Faubourg Ste. Marie, a plantation in the rear, and a batture in the front.[102] He produced evidence to the effect that John Gravier had sold two thirds of the Batture to Livingston and Peter Delabigarre in March, 1804. Furthermore, he requested the Court to recognize the petition of the absentee heirs and order a partition of the Batture so that each might receive his share.[103] Whether *all* the Batture had been awarded to John Gravier in the administrative sale of the inventoried effects by the Spanish Court as a part of the plantation or whether it belonged to the general estate was a fine point of distinction.

[98] *Ibid.*, 376–77. [99] *Ibid.*, 323–25. [100] *Ibid.*, 281–306.
[101] *Ibid.*, 281–415. [102] *Ibid.*, 386. [103] *Ibid.*, 323–25, 391–400.

In replying to the arguments of Mazureau on behalf of himself and his co-defendants, the heirs of Peter Delabigarre and John Gravier, Livingston contended that following the death of Bertrand Gravier the Batture and the rest of the estate had been adjudged to John Gravier by a competent Spanish tribunal in August, 1797. He further declared that it was in consequence of this judgment and, more especially, the decision of the territorial Court favorable to John Gravier in his suit against the New Orleans municipality that he and Peter Delabigarre had purchased the Batture in good faith. Therefore, the defendants argued that the plea of the absent heirs should be denied. The District Court decided in favor of the defendants and an appeal to the state Supreme Court was made.[104]

The higher Court of Louisiana first ruled that an heir might bring suit for an act of partition against a person who had purchased the entire property from a co-heir at any time within thirty years. Then, in reviewing the facts, the Supreme Court pointed out that John Gravier's "own communication to the Spanish tribunal" in 1797 indicated the existence of other heirs and he was therefore guilty of "want of good faith as a possessor." "In testing his faith and honesty, as possessor under the adjudication of the Spanish tribunal," the Court was ready to decide the most important question before it, "Were the premises [Batture] sued for included in said adjudication?" It was the opinion of the Court upon this point that under the Spanish decree of 1797 Gravier had acquired title only to that portion of the estate "actually appraised," and that, as the Batture had not been inventoried, it was in no wise a part of the succession. The

[104] Gravier *v.* Gravier's Heirs, 3 Mart. (N.S.), 206 (1825); Gravier *et al.* *v.* Livingston *et al.*, 6 Mart. (O.S.), 405–409 (1819).

Supreme Court then proceeded to reverse the judgment of the lower Court by recognizing the absentee heirs of Bertrand Gravier as entitled to three fourths of the Batture and ordered that there be a partition of the same and that each be awarded his share. By this decision Livingston lost the greater portion of his holdings in the Batture and thereby lost most of the profit he had expected to realize from the sale of this property. Nevertheless, it was owing to the phenomenal increase in the value of the land that he was able to discharge his long-standing indebtedness to the Federal government by the sale of a portion of his remaining Batture holdings.

When Livingston left for New Orleans in 1803 he was of the opinion that the two legal acts which he had duly executed in New York on December 22 insured the Treasury Department against any loss occasioned by the shortage in his accounts. In these notarial acts he had agreed to pay the Court $50,000 by December 24 or to accept judgment for $100,000, and he had also given "bond" with a "warrant of attorney" to accept judgment by default if he failed to make payment on or before the designated date. On December 27, 1803, he appeared in the District Court of New York through attorney Daniel D. Tompkins and accepted judgment for the $100,000 and the court costs of $14.89 or a total of $100,014.89.[105] He expected the returns from the sale of his property to be sufficient to liquidate the estimated deficit because indications were favorable to a settlement with the Comptroller for the exact amount due with interest at 6 per cent. Such a settlement was legal as a congressional act of

[105] Transcript of Exemplification of Judgment in "The United States *v.* Edward Livingston," U.S. District Court, District of New York, in Walden *v.* Livingston, U.S. Circuit Court for the Eastern District of Louisiana, Case No. 676. This case cited hereafter, Walden *v.* Livingston, Case No. 676.

March 3, 1797, gave the Treasury the right to settle accounts with delinquents in accordance with its views of justice.[106] All hopes of a speedy settlement were lost when the Court delayed action until 1806, for other factors had entered into the situation by that time.

Neither at the time of Livingston's departure from New York nor at any subsequent period were the accounts of the judgment clear in the New York Court or in the Treasury Department. The lax business methods that Livingston permitted while in the office of district attorney were evidently but a reflection of the procedure followed in the Treasury Department itself. Procrastination was the order of the day, records were irregularly kept, and in many instances important documents were misplaced or lost. In consequence of such carelessness and inefficient business methods, the department was never able to state with absolute certainty the exact deficit as its claim against Livingston was for different amounts on various subsequent dates. For this reason Livingston probably paid more than he owed; on the other hand, he was dilatory in the discharge of this obligation and utilized every legal technicality to postpone payment.

Evidently the revived legal proceedings in 1806 against the former District Attorney were actuated by the Bank of New York, for that institution held a mortgage on Livingston's properties to the amount of $49,890. On March 22, 1806, Livingston's property in New York was seized and sold by the Marshal of the district for $49,906. This amount was ample to pay in full the deficit as estimated in 1803, but it was not applied on his account with the government. The United States District

[106] *Laws of the United States of America from the 4th of March, 1789 to the 4th of March, 1815* (Washington, 1815), II, Chap. 368, No. 74, pp. 594–95.

Attorney ruled that the bank held a prior lien on the property and ordered that it be paid the amount of the mortgage and that the government be credited with the balance, $16.96. This balance did not appear again in the records.[107] When Livingston learned that settlement had been made with the bank, he contended that the money should have been paid to the Treasury.[108] The government appeared to concur in this opinion when it announced at a later date that if Livingston's holdings in Louisiana were insufficient to liquidate the debt it would take the New York property that had been seized in 1803 regardless of current ownership.

After the payment of the bank's mortgage there was no further action against the defendant by the government until 1822. In that year Stephen Pleasanton, Agent of the Treasury, moved to revive the judgment against Livingston in accordance with the provisions of the congressional act of 1820. This act not only created the office of Agent but it also required the incumbent to issue a "warrant of distress against such delinquent officer and his sureties" as the First Comptroller of the Treasury should find to be in arrears with that department.[109] In conformity with its provisions, Pleasanton, on March 6,

[107] Copy of the return of the writ of *fieri facias* filed March 22, 1806, by John Swartwout, United States Marshal, in Records of the Department of Justice, Office of the Agent of the Treasury, in The National Archives. These Records of Department of Justice, Office of Agent of Treasury, are cited hereafter as Office of the Agent of the Treasury. On the Marshal's return there was an unexplained notation concerning a levy for the further settlement of $49,888.29 and interest on $49,870.47. No light has been thrown upon the origin and purpose of these specific amounts and they did not recur in any subsequent transaction.

[108] Livingston to Stephen Pleasanton, March 7, 1827, *ibid.*

[109] *Treasury Department Document No. 2603, The Accounting System of the United States From 1789 to 1910* (Washington, 1911), 37; *Acts of Congress*, 16 Cong., 1 Sess., Chap. 107, pp. 93–97.

1822, instructed Robert Tillotson, United States District Attorney in New York, to institute the necessary legal proceedings to revive the judgment against Livingston. On May 22 Tillotson replied that the judgment of $100,014.89 had been revived two weeks before, but he left the amount to be inserted in the *fieri facias* in blank.[110] The accounts of the judgment were probably not clear in the Court at New York and, for some unaccountable reason, Pleasanton inserted the amount of $52,490.19 in the blank and forwarded the *fieri facias* to John Nicholson, the Marshal in New Orleans, with orders to seize and sell enough of Livingston's property to pay the sum indicated.[111] With the assistance of certain freeholders Nicholson designated a sufficient number of the defendant's holdings to satisfy the amount included in the *fieri facias*. In addition, he required Livingston to furnish him by July 1 a schedule of property, which consisted of sixty-four Batture lots.[112]

Livingston probably was aware of the Agent's activities as early as June 20, because he wrote to Pleasanton that the reissuance of the judgment had defeated his plan to pay the debt immediately. Unless he were informed of the proceedings against him, he was attempting to convey the impression of preparing all along to effect the necessary arrangements to settle the account. He requested a postponement of the proceeding until his return to Washington in September when he would satisfy the demands of the Treasury.[113] The Treasury Depart-

[110] Robert Tillotson to Pleasanton, March 9, May 22, 1822, Office of the Agent of the Treasury.

[111] Pleasanton to Tillotson, August 2, 1822, *ibid.* [112] *Ibid.*

[113] Livingston to Pleasanton, June 20, 1822, Records of the Department of Justice, Solicitor of the Treasury. Papers relating to Edward Livingston's settlement of the account of the Department of the Treasury, 1820–1830, in The National Archives. These Records of Department of Justice,

ment agreed to suspend its action of June 5 for a period of four months, but it moved to protect itself by securing a *venditione exponas* from the Court in New York to be served should Livingston fail to make proper settlement within the time stipulated.[114]

After the judgment was revived Livingston evidently intended to effect a compromise with the Treasury Department whereby the funds paid to the bank in 1806 would be credited to his account. The success of the plan was contingent upon gaining access to the records pertaining to the sale, but Livingston's efforts were thwarted by Judge William P. Van Ness so long as he remained on the bench. Meanwhile, on the approach of each postponed date of payment, Livingston requested the Treasury Department for an extension of time. His petitions were supplemented by appeals from certain of his associates in private and public life. Their requests conformed so closely in content and form to his own that there was little doubt he prompted them, yet the department complied in so far as it could consistently.

During the month of September, 1822, Livingston visited Washington to secure a further extension of time beyond October 5, the date when the four-month period that the Treasury Department had agreed to suspend action against him would expire. He realized the importance of political assistance and secured the aid of the Louisiana delegation in Congress. Naturally the department hesitated to refuse a request from the two senators, James Brown and Henry Johnson, and the House member, Josiah Stoddard Johnston, as they were friends of

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Solicitor of Treasury are cited hereafter as Records of the Solicitor of the Treasury.

[114] Pleasanton to Tillotson, August 2, 1822, Office of the Agent of the Treasury.

the Administration. Livingston based his plea for an extension of time on the grounds of mutual benefit and, singularly, it was the identical argument advanced by the three men from Louisiana. Johnston pointed out to the Agent [115] that the property had been in litigation until recently, thereby precluding the completion of extensive improvements on the adjacent property that soon would enhance the value of Livingston's holdings. He assured the department that the few moneyed men in New Orleans would combine to purchase the property at a low cost if sales were forced at that time because ready cash was scarce. If the government were interested in securing a fair return on the sales, he continued, it should adopt the practice followed in New Orleans and sell the property on credit of one, two, and three years. In their joint letter, the two senators not only advanced the same argument used by Johnston but added that in their opinion Livingston, by his past actions, had shown himself anxious to act honestly in the affair.[116] As Secretary of the Treasury William H. Crawford was absent from the capital, the department delayed its reply so long that Livingston was forced to depart for home prior to his return to the office.

Before leaving for New Orleans, however, Livingston made a proposition to the Treasury Department on October 22, which he asserted would "be to his own welfare and the best protection of the government." He proposed that settlement be made in four yearly installments beginning March 1, 1823, and that payments be conditioned on either private or public sales that he would make with the consent of the Marshal. If he failed to meet the payments promptly the Marshal would sell a

[115] Josiah S. Johnston to Pleasanton, October 11, 1822, *ibid.*

[116] James Brown and Henry Johnson to *id.*, October 28, 1822, *ibid.*

sufficient amount of his property to pay the current installment. He informed the department of his plan to secure a credit on his account to the amount paid to the Bank of New York in 1806. "The liquidation," he continued, was "to be made without prejudice to such charges" as he might "hereafter establish for costs & services which the state of the offices at New York will not permit me to procure the necessary papers to prove[.] these charges when allowed to be Deducted from the last payment." [117]

The Agent agreed to extend the time until June 1, 1823, and also to the sale of sufficient property to liquidate the debt in full on credits of one, two, and three years with the concurrence of the Marshal as to price and security. He was unwilling, however, to release judgment and execution on the several lots until all payments on each were made by the individual purchaser. As further provision to protect the government, he notified Livingston that if the property were not sold by June 1, 1823, a *venditione exponas* to sell a sufficient part of the remaining property to cover the entire indebtedness would be forwarded to the Marshal.[118] Livingston vigorously protested against such procedure on the grounds that no one would purchase the land unless given title, and he explained to the Agent that the government could not possibly lose the property or security even if title were given and payments were not made. As his protests were to no avail, he again turned to the Louisiana delegation in Congress for assistance. The joint letter of Johnson, Brown, and Johnston to Secretary Crawford appears to have secured the desired results, for the department finally agreed to the defend-

[117] Livingston to *id.*, October 28, 1822, *ibid.*

[118] Pleasanton to John Nicholson, United States Marshal in New Orleans, October 29, 1822, *ibid.*

ant's request except in regard to granting a further extension of time.[119]

Even though Livingston failed to make a payment on June 1, 1823, the government delayed action until October 21, at which time Tillotson forwarded the *venditione exponas* to the Agent of the Treasury with the statement that the return could not be received until the February term of the Court. As soon as Livingston learned that the Marshal had received the writ for execution, he applied for a further extension of time and justified his request on the grounds that the property seized or to be seized possessed a value of $242,000 but would yield less than half that amount at a forced sale.[120] He elicited the support of prominent citizens and with their assistance he was able to have the Agent delay action. On April 28, 1825, the Agent informed Nicholson that the government had revived the terms of the agreement of October 29, 1822, and as a further concession to Livingston had ruled that time was to be computed from the date of his letter.[121]

Livingston's dilatory tactics had thoroughly tried the patience of the government and when there had been no disposition of the property by September 20, 1826, the Court in New York ordered it sold at public sale and settlement presented before the November term of the Court. John W. Smith, United States marshal in Louisiana, was appointed agent to purchase the property for the government in case a fair price were not bid on the various items listed. The lack of purchasers caused the

[119] *Id.* to *id.*, October 29, 1822; Brown, Johnson, and Johnston to William H. Crawford, January 5, 1822 [3], *ibid.*

[120] A document consisting of several certifications as to the value of Livingston's property in New Orleans, variously dated between July 31, 1822, and November 5, 1823, *ibid.*

[121] Agent to Nicholson, April 28, 1825, *ibid.*

sale to be postponed from time to time until the necessity of reporting to the Court in New York in November forced Smith to buy the property for the government on October 28, 1826, at a price of $92,011.81.[122] This should have closed the account with the Treasury,[123] as was revealed by the notation made in the office of the Agent to the effect that the transaction closed Livingston's account with the government.[124] It was disregarded, however, and an additional levy was made against the defendant in 1828, probably because Livingston entered suit for satisfaction.

On January 20, 1827, Livingston entered suit to have the Court in New York declare the debt satisfied and order paid to him the sale price of the Batture lots on the grounds that the returns from the sale of his New York property had been sufficient to liquidate the debt.[125] His deposition alleged that until recently Van Ness had defeated his efforts to secure the records concerning the sale of his property in 1806. He had finally gained access to those documents and according to the Marshal's return the judgment should have been declared settled when the property was sold. Consequently,

[122] Pleasanton to John W. Smith, United States Marshal in Louisiana, September 20, 1826, *ibid.*; document consisting of a copy of a *venditione exponas* ordering sale of Livingston's Louisiana property issued by the Court at New York and the Marshal's return of the writ reporting the sale of fifty-four lots on the Batture for $92,011.81, *ibid.*

[123] Agent to Smith, September 20, 1826; copy of a *venditione exponas* issued by U.S. District Court in New York ordering sale of Livingston's property and Marshal's return of this writ, January 11, 1827; undated office note relating to purchase of Livingston's lots by Smith, stating "balance paid and Livingston's account closed," *ibid.*

[124] An undated office memo summarizing the Livingston Case from 1803 to 1832, Records of the Solicitor of the Treasury.

[125] Deposition of Edward Livingston, January 22, 1827, U.S. *v.* Livingston, U.S. District Court, District of New York, Office of Agent of the Treasury.

he moved that the Court declare the debt settled and allow him to recover his property in New Orleans or the return of the money equivalent to its sale price. At the first judicial proceedings concerning the motion the case was continued until the fall term of the Court. In the meanwhile, Tillotson forwarded a copy of the motion and its accompanying papers to Pleasanton who, in turn, ordered the Marshal in Louisiana to stay the execution and hold the property until he received further instructions.

In the interim, Livingston offered the Treasury Department a new proposition whereby the account could be settled without "further litigation." On March 7, 1827, he gave Pleasanton a history of the case and explained the basis of his motion to enter suit for satisfaction.[126] Naturally he glossed over or omitted entirely any reference in his letter to those facts that were detrimental to his interest. He contended that he had always been fair in his dealings with the government, while it had mistreated him; consequently, if his motion to enter satisfaction were denied, he would have the sales in New Orleans put aside, for they had been executed in an irregular manner. This would "impose the obligation on the United States to return the money and to pay [for] the improvements and difference between the actual value and the price that was paid by the purchasers." He would be justified in this action, he stated, because the Marshal had sold *"my interest* in certain property at New York for more than the balance now found due," and, in addition, had disposed of his property in New Orleans for over $92,000. In view of these facts the money received from the sale of the New Orleans prop-

[126] Livingston to Pleasanton, March 7, 1827, Records of the Solicitor of the Treasury.

erty, he contended, would have to be returned to him if his motion were sustained as he had the "best legal advice . . . [the Court] must do so." Although Livingston had suffered "a most ruinous sacrifice of property," through the sale of his holdings at values so low that some lots worth $40,000 netted only $10, he wished "to put an end to a Disagreeable business." To terminate the issue he would settle with the government if the Treasury would enter satisfaction and recover to him lots in New Orleans "to an amount equal to the Difference between the Debt as reported and the sum for which all the lotts sold."

Livingston believed that his proposition was eminently fair, but the Treasury Department made no reply until the Court had ruled upon his motion for entering satisfaction. Following the Court's denial of his petition, the department sought a renewal of the execution to an amount of $7,988.19, or the difference between the price paid for the New Orleans property on October 28, 1826, and the original confessed judgment of $100,014.89. A delay in the execution occurred because some of the documents used in the Livingston case to enter satisfaction were mislaid; but, on March 10, 1828, the Court issued an alias execution directed to the Marshal in Louisiana that was returnable the first Tuesday in May, 1829.[127] During 1828 the government's agent, Smith, made sales to a D. T. Walden, who evidently was unable to meet his obligations as they fell due. On April 1, 1829, Livingston entered these proceedings as an interested party when he instructed the United States Attorney in Louisiana, John Slidell, to prosecute the suits against the purchasers with vigor as he expected to se-

[127] Pleasanton to John Duer, United States District Attorney in New York, February 27, 1828; Duer to Pleasanton, March 10, 1828, *ibid.*

cure a return from one of them.[128] By August 20 the suits were settled, but none of the receipts appear to have been paid to Livingston although it seemed obvious that there was some justification for his claim.

The judgment against Livingston in favor of the United States, rendered in the District Court at New York in May, 1822, was duly canceled in the New Orleans mortgage office on December 9, 1829,[129] following the termination of the suit by the District Attorney at New York on the previous August 20. Finally, on February 27, 1830, the account against Edward Livingston was closed in the records of the Treasury.[130] A statement of the Treasury office revealed the fact that the government received $102,017.20 from the sale price of the Batture lots and the interest on the deferred payments.[131]

To satisfy an original indebtedness of $43,666.21 the United States government had sold a sufficient amount of Livingston's real estate in New York and in New Orleans to yield a return of $151,924.16. Although Livingston resented the methods of procedure employed by the government its actions were not to be condemned entirely. The Treasury Department not only waived the 6 per cent interest on the principal but received payment of an amount only slightly in excess of the sum for which he had accepted judgment in 1803. There may

[128] Livingston to John Slidell, United States District Attorney in Louisiana, April 1, 1829, in Walden *v.* Livingston, Case No. 676.

[129] Certificate issued by P. Lamreaux, Recorder of Mortgages, New Orleans, May 1, 1836, *ibid.*

[130] An undated office memo summarizing the Livingston Case from 1803 to 1832, Records of the Solicitor of the Treasury.

[131] No. 56985, Treasury Department. Adjustment of Account in relation to the sale of Livingston's lots in New Orleans certified by Joseph Anderson, Comptroller of the Treasury, February 26, 1830, in Walden *v.* Livingston, Case No. 676.

have been some justification for Livingston's questioning the legality of diverting the funds derived from the sale of his New York properties to pay the mortgage held by the bank; nevertheless, it was a just debt and from the ethical point of view it was immaterial whether or not the government's position on this point was legally correct. There was even less justification of Livingston's position with regard to the sale of his New Orleans holdings, for he had accepted judgment for $100,014.89 and his Batture property was the only source upon which he could draw to pay the debt. His contentions could be justified only on the grounds that the bank should not have been paid and that the government should have settled on the basis of the actual shortage instead of the judgment which he confessed in court.

Livingston did not abandon his plan to recover the money which he felt the government had unjustly forced him to pay. No move was made in the matter, however, until after he had received his clearance from the Treasury Department. His plan had been revealed to Pleasanton in March, 1827, when he threatened to enter suit to recover his New Orleans property should the government refuse to reimburse him to the amount of the sale price. After an unsuccessful attempt to secure a satisfactory settlement with the Treasury in 1832, Livingston made his first move to recover his Batture lots when in 1834 he instituted a series of suits against the purchasers in the Federal Court at New Orleans. These suits were based on various technicalities with which Livingston was familiar, for he had served on the committee that drafted the Louisiana Civil Code and this knowledge was of inestimable value to his attorneys. It was not known whether Livingston believed that he had a just

claim to the lands or that he justified his action on the grounds that the defendants could enter a claim against the government if they lost their land. Yet, in so far as the purchasers were concerned, the judicial proceedings were unjust, for they were ignorant of Livingston's difficulties with the Treasury Department when they bought the property.

The attorneys for the plaintiff followed the same procedure in practically every case. They alleged that the proceeds from the sale of Livingston's New York properties should have been applied to the settlement of his debt because the government's judgment gave the Treasury Department a prior claim. They argued that the sale of the New Orleans lots was irregular in that the government had failed to record its judgment against Livingston in Louisiana in accordance with requirements of the state law governing mortgages on property. They also contended that the several individuals who could not produce their receipted payments for the lots had no basis for their claims to title. Without exception the defendants attempted to have the suits transferred to the state courts on the plea that Livingston still was a citizen of Louisiana although he had claimed New York as his official domicile since 1831. They believed that if the cases were decided in the state courts they would more likely be tried as suits in equity, which would be to their advantage. The personal equation also entered into their contentions. They pointed out the fact that the present District Attorney, Henry Carleton, was related by marriage to Mrs. Livingston and his partner was one of Livingston's counsel. These were such important factors, they contended, that the President should supersede Carleton, for they were unwilling "that their inter-

ests which are identified with those of the Government should be intrusted to the present Dist. Atty." in this "unjust prosecution." [132]

The defendants demanded the assistance of the Federal government in their suits on the basis of dual interest, since their titles had been guaranteed by the deeds they had received from the agents of the government. At first, the request received scant attention from the Treasury Department, which attempted to dismiss the matter on the pretext that the government did not guarantee the titles but merely gave quitclaim deeds on land that it sold.[133] The purchasers were dissatisfied with the decision and continued their demand for assistance on the grounds that the Agent of the government and the Louisiana Marshal had guaranteed the titles. The Treasury Department finally applied to Attorney General B. F. Butler for a ruling on the question. He held that it was not contrary to law and custom for the government to guarantee titles and, if the titles were not guaranteed in the deeds, the government was still equitably responsible for the sales.[134]

Following the receipt of the Attorney General's opinion, the United States District Attorney at New Orleans was ordered to enter into the cases for the government as an interested party. This proved to be a boon to the defendants for after the entrance of the District Attorney none of the suits appear to have been continued and in most instances they were withdrawn. In at least one case and probably others, however, Livingston's attorneys

[132] F. N. Lea, Clerk of U.S. District Court in New Orleans to Solicitor of the Treasury, March 8, 1834; *id.* to His Excellency the President of the U.S., April ?, 1834, Records of the Solicitor of the Treasury.

[133] Solicitor to Lea, April 21, 1834; *id.* to *id.*, June 20, 1834, *ibid.*

[134] B. F. Butler to Virgil Maxey, Solicitor of the Treasury, April 3, 1825, *ibid.*

had been able to secure a compromise out of court before the government moved in the matter.[135] The termination of these suits following the action of the government would seem to indicate that there was little legality to Livingston's claims. Nevertheless, until his death Livingston felt that he had been treated unjustly and that he had been thoroughly ethical in his plan to force the government by indirect means to settle with him at the expense of guiltless fellow citizens.

Regardless of the time, energy, and money expended by Livingston in the Batture litigation he was amply compensated for his humiliation, anxiety, and disappointment. From the residue of his large holdings came a competence for his widow during her last years. In addition, the reduced returns from this investment made it possible for him after almost twenty-seven years to pay in full his debt to the government. From the day he left New York in 1803, however, he was frequently charged with having been a defaulter. Whenever he was a candidate for public office the old charges were revived and, especially, when he received public recognition they were aired in political speeches and through the columns of the press. Except during the trying times of the Burr episode and during his controversy with Jefferson, he completely ignored all reference to this unfortunate affair, even refusing to defend himself against the accusations.

[135] Livingston *v.* G. R. Stringer, U.S. District Court for the Eastern District of Louisiana, Case No. 3409 (Federal Court Building, New Orleans).

Chapter IX

JACKSON'S AIDE-DE-CAMP

CLAIBORNE was opposed to the legislature, when, in 1809, it memorialized Congress to grant an early admission of the territory into the Union. In his letter of transmittal to Secretary of State Madison, he expressed his opposition and, probably as a result of the Batture controversy, urged that the laws pertaining to the territorial judiciary be amended.[1] However, the political situation that developed by the end of 1810 caused Claiborne to discontinue his active opposition to the question of admission. The local political conditions were further aggravated by the action of the West Florida Convention of September 26, 1810. This Convention declared the district to be "a free and independent state" and requested the United States, in case it determined to annex the "free state" to one of the neighboring commonwealths, to join it to the Territory of Orleans.[2]

Public opinion in the territory was divided over the question.[3] The group favoring statehood feared that an attempt to annex this district to Orleans would weaken their cause. The members of the French faction, irre-

[1] Gayarré, *History of Louisiana*, IV, 211–15.

[2] Isaac J. Cox, *The West Florida Controversy, 1798–1813* (Baltimore, 1918), 415–16.

[3] *Ibid.*, 330–34.

spective of their position on the question of statehood, were opposed to the incorporation of the West Florida area.[4] The inclusion of this section would strengthen numerically the American group, and, in addition, it was known that Claiborne was favorable to the plan.[5] When President Madison issued his proclamation ordering Claiborne to take possession of West Florida, active opposition developed both in New Orleans and in Washington.[6] As the friends of statehood locally feared, the action of the President was one of the causes of the opposition that developed in Congress over the admission of the Orleans Territory into the Union.[7] Notwithstanding, the action of Madison was sustained, and by February 16, 1811, the act providing for the admission of the Territory of Orleans had passed both Houses of Congress and had been signed by the President. It was not, however, until April 14, 1812, six days after admission of the territory as a state, that Congress added the West Florida district to the state of Louisiana. As the territorial legislature failed to give official assent to the act of Congress until August 4, this section had no representation in the Constitutional Convention.[8]

The territorial legislature was in session when the official news of congressional action was received, and that

[4] Thorpe (comp.), *The Federal and State Constitutions,* III, 1380–81; *Journal de la Convention d'Orléans de 1811–12* (Imprime par Jerome Bayon, pour l'usage de la Convention de 1844, New Orleans, 1844), 13. The convention passed to the third reading the preamble to the constitution which defined the limits of the state. It was the French party that defeated, by a vote of twenty-five to fourteen, the amendment to include the West Florida area in the territorial limits of the state.

[5] New Orleans *Louisiana Courier,* February 22, 1811.

[6] New Orleans *Louisiana Gazette,* September 4, 1810; February 18, March 12, 1811.

[7] *Annals of Congress,* 11 Cong., 3 Sess., 518–79.

[8] Martin, *General Digest of the Acts of the Legislatures,* 212–32.

body proceeded to call an election and to perform the other provisions required by the act.[9] The election was set for September 17, and a spirited campaign followed. It differed little from those of the present and became very bitter and closely contested. Each faction made a bid for general support by placing on its ticket men both from the ranks of the "ancient" Louisianians and the recent immigrants from the United States. Several tickets were proposed by various enthusiastic groups of each faction, but the leaders centered their efforts on the candidates whom they had selected. Livingston's name appeared upon several of the lists proposed by certain groups of citizens who stressed the importance of selecting men who had proved their "true love of country," [10] and were "in favor of becoming a state." [11]

The usual charges of bribery and attempted bribery were made during the last days of the campaign, and effective use was made of the revived Burr episode.[12] A whispering campaign against the election of lawyers aroused the ire of one "Pindar" who reminded the voters through the columns of the press that "the greatest men America has to boast of were lawyers." He cautioned the electorate to "let not their poisonous tales" influence them to vote against a man on account of his profession. "Must the Territory of Orleans," he continued, "be deprived of the talents of Mr. Livingston and Mr. Brown

[9] *Louisiana Gazette and New Orleans Daily Advertiser,* April 9, 1811; Territory of Orleans *Acts,* 1811, pp. 1–4.

[10] *Louisiana Gazette and New Orleans Daily Advertiser,* August 3, 22, 1811; New Orleans *Louisiana Courier,* September 16, 1811.

[11] *Louisiana Gazette and New Orleans Daily Advertiser,* September 16, 1811; New Orleans *Moniteur de la Louisiane,* September 7, 1811.

[12] *Louisiana Gazette and New Orleans Daily Advertiser,* September 16, 1811; New Orleans *Louisiana Courier,* September 16, 1811.

because they are counsellors at law," and "must Judge Moreau and Judge Martin be incapacitated from serving as members of the Convention because they are good judges?" [13]

Evidently the citizens of New Orleans failed to appreciate fully the logic of Pindar's argument, for not one of the four candidates he recommended so highly was elected.[14] In New Orleans the Claiborne faction elected fifteen of the twenty members and throughout the state they secured a good working majority in the Convention. The opposition party in the city returned John Watkins, Thomas Urquhart, Sam Winter, Colonel Deville deGoutin Bellechasse, and Jacques Villeré—all men of importance and prestige in the community.[15]

The defeat of Livingston was not surprising; the surprising feature was his candidacy and the respectable vote he received at the polls. He was the principal target of the Claibornites; personally, he was most objectionable to Claiborne, who exerted himself on every occasion to thwart him. The controversy over the Batture, which had somewhat subsided after the question had been transferred to the courts, was now revived and used effectively against Livingston. The question of his connection with the Burr conspiracy and his association with the group who had protested to Congress in 1804 had a bearing on the results. J. B. Thierry, editor of the *Courier,* used every opportunity to contribute to his de-

[13] *Louisiana Gazette and New Orleans Daily Advertiser,* September 2, 1811.

[14] Not one of the three papers, the *Courier,* the *Gazette,* or the *Moniteur,* gave the votes received by the defeated candidates in their tabulations of the election returns.

[15] *Louisiana Gazette and New Orleans Daily Advertiser,* September 20, 1811.

feat,[16] and the charges of being a land speculator and a defaulter did not help his candidacy.

Even though Livingston failed to win a seat in the Convention, his interest in the welfare of the state continued and he made what contributions he could by working in connection with his friends in that body. His definite and positive influence was resented by Claiborne, who credited him with many of the provisions incorporated in the organic law, especially that pertaining to the method of electing the governor.[17] The final draft of the constitution provided that the vote of the electorate was not conclusive; that at a joint session of the two houses, by majority vote, the governor was to be selected from the two candidates receiving the highest number of votes at the polls.[18]

The Convention, which met in New Orleans November 4, 1811, continued its session until January 28, 1812.[19] Its work proved acceptable to Congress, and on April 8, 1812, President Madison approved the congressional "act of admission" of Louisiana, effective April 30.[20] In conformity with constitutional provisions, an

[16] New Orleans *Louisiana Courier,* September 11, 1812. In the congressional election of the following year, Thierry in a signed editorial stated, "I will oppose his election to the utmost of my power, because I am assured that he aspires to the title of representative of the State in Congress only for the purpose of intriguing against the citizens of this city and against the respectable Mr. Jefferson in the important affair of the Batture." And again on September 28 he assured his readers that "Mr. Livingston has made every effort to obtain your suffrage; but I still indulge the hope that he will be disappointed in his expectations. Mr. Livingston has ever labored to promote his own fortunes."

[17] Claiborne to Gallatin, May 3, 1812, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 91.

[18] *Journal de la Convention d'Orléans de 1811–12,* pp. 13–14.

[19] *Ibid.,* 19.

[20] *Louisiana Gazette and New Orleans Daily Advertiser,* May 26, 1812.

election for the various state officers was called for June 29.[21] Prior to May 3 Claiborne announced his intention of becoming a candidate for the position of governor.[22] Two other candidates, Jacques Villeré and Jean Noël Destréhan announced for the position, but the real contest was between Claiborne and Villeré. The fight was a continuation of the convention election contest and became very bitter. Thomas B. Robertson and Livingston were conspicuous leaders of the opposition to the governor. To James Monroe, June 27, Claiborne wrote, "The opposition to me, is very violent, & I am undergoing all the Calumny which Malice can invent." [23] Again he said, "My name also is with the people; But with what probability of success, I know not—much Wealth, & considerable *Intrigue* are enlisted against me. —My old Batture acquaintance, Livingston after having had, (as is believed) a principal hand *in pointing out the mode of electing a Governor,* has undertaken to direct all the Machinery, which can be brought to bear against me." [24]

As election day approached, public excitement became greater than during the convention campaign,[25] and Claiborne was in doubt as to the final result. The Claiborne machine worked smoothly and efficiently, however, and the outcome showed that he overestimated the strength of the opposition. He received a majority

[21] Claiborne to Monroe, June 27, 1812, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 118.

[22] *Id.* to Gallatin, May 3, 1812, *ibid.,* 91.

[23] *Id.* to Monroe, June 27, 1812, *ibid.,* 118–19.

[24] *Id.* to Gallatin, May 3, 1812, *ibid.,* 91.

[25] *Louisiana Gazette and New Orleans Daily Advertiser,* June 5, 1812. The election of state officers aroused a great deal of excitement, the main issue being "for or against Governor Claiborne."

in every district and carried the state by a vote of almost three to one over all the other candidates.[26] Even in New Orleans, the stronghold of the French party, he led Villeré 537 to 318. Under the provisions of the constitution, he assumed the duties of the office of governor until final action by the legislature on July 27. The General Assembly convened on that day, and the Claiborne forces organized both houses, elected Julien Poydras president of the Senate, and G. St. Martin speaker of the House.[27] On a joint ballot of the two houses, Claiborne was officially elected by a large majority.[28] He was very powerful politically, but the opposition continued to work; and, within a short time, it had sufficient strength in the Senate to embarrass him.

On September 3 the General Assembly elected Destréhan and Allan B. Magruder United States senators, each receiving twenty-one votes. Had the opposition forces centered their efforts in the interest of a particular candidate, they could have elected one of the two senators; but the failure to concentrate on one man resulted in James Brown receiving sixteen, Eligius Fromentin five, and Livingston three, or a total of twenty-four votes.[29]

Not at all discouraged by his defeat for the Senate,

[26] *Ibid.*, July 2, 1812; Louisiana *Senate Journal*, 1812 (French ed.), 10. Whenever accessible, the English editions of the House and Senate journals have been consulted. The French edition is so designated when used.

The vote was Claiborne 2,757, Villeré 945, Destréhan 168. Claiborne stated, "I have obtained a majority in each and every county in the state." Claiborne to John Dawson, August 10, 1812, in Rowland (ed.), *Letter Books of W. C. C. Claiborne*, VI, 156.

[27] Louisiana *Senate Journal*, 1812 (French ed.), 4, 6; *Louisiana Gazette and New Orleans Daily Advertiser*, July 28, 1812.

[28] *Louisiana Gazette and New Orleans Daily Advertiser*, July 28, 1812.

[29] *Ibid.*, September 5, 1812; Louisiana *Senate Journal*, 1812 (French ed.), 80.

Livingston became one of five candidates for Representative in Congress from the New Orleans district.[30] The election was for the remainder of the Twelfth in addition to the Thirteenth Congress. Robertson, former Secretary of the Territory, and one of the leading opponents of Claiborne, was elected by a plurality of 308 votes.[31] Although running fourth in New Orleans, Robertson carried the Florida parishes by a large majority.[32] Fromentin led in New Orleans; and while Livingston ranked fourth in the returns of the district as a whole, he received a respectable vote in the city, ranking next to Fromentin.[33]

Destréhan resigned his position as United States senator, and Livingston's friend, James Brown, was elected to succeed him.[34] Brown and Robertson, by judiciously dispensing the Federal patronage, were able to increase the numerical strength and power of the opposition. As a protest against the Claiborne government, many of the Creole-elected representatives of the General Assembly resigned their positions, and still others refused to take their seats. Every possible attempt to embarrass the Governor was made; and, on the question of executive

[30] *Louisiana Gazette and New Orleans Daily Advertiser,* September 10, 1812. "We give the list of Candidates for Representative to Congress in the proper Order as they declared themselves. Stephen A. Hopkins, Thomas B. Robertson, Henry F. Johnson, Edward Livingston, E. Fromentin, G. F. Favre." *Ibid.,* September 24, 1812.

[31] *Ibid.,* October 28, 1812. Robertson received 875, Johnson 567, Hopkins 450, Livingston 299, and Fromentin 288 votes. New Orleans *Moniteur de la Louisiane,* October 20, 1812.

[32] *Louisiana Gazette and New Orleans Daily Advertiser,* October 8, 1812.

[33] *Ibid.,* October 3, 1812.

[34] "On Tuesday last Mr. James Brown, a friend of Mr. Livingston, was elected Senator to fill the vacancy created by the retirancy of Mr. Destréhan." *Ibid.,* December 3, 1812. The vote on December 1, 1812: Brown 26, Thomas Posey 14. Louisiana *Senate Journal,* 1813, p. 11.

power of nomination, the Senate was equally divided seven to seven. The Senate claimed this power and the Executive insisted that constitutional provision granted him that authority. Claiborne held Livingston and Robertson responsible for the situation,[35] and he informed Monroe that "the unprincipled intriguers of New Orleans with Livingston at their head will prevent me from effecting many objects." [36] The Claiborne party, nevertheless, had a majority of the General Assembly on a joint vote. At the special session, November 23, the three electoral votes of the state were given to Madison by a majority of seven.[37] The tide, however, was beginning to turn against Claiborne.

Congress, June 18, 1812, declared that a state of war existed between the United States and Great Britain. Louisiana was in a defenseless condition and the general government showed no inclination to remedy the situation. The War Department removed the only regiment of troops stationed in New Orleans, thereby greatly agitating the people, who were becoming convinced that the British contemplated an attack against Louisiana. The Governor lodged a complaint with the two senators, but failing to secure Federal assistance, proceeded to organize the state militia. The unfriendly attitude of certain Indian tribes and the probable necessity of enforcing the draft made it advisable for Claiborne to mobilize the militia and hold a detachment under orders.

[35] Claiborne to Dawson, August 10, 1812, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 156.

[36] *Id.* to Monroe, August 10, 1812, *ibid.,* 159.

[37] "For the Madison ticket 23; For the Clinton ticket 16; Majority 7, consequently the three votes of the State of Louisiana are for the present encumbent." *Louisiana Gazette and New Orleans Daily Advertiser,* December 1, 1812.

The militia problem proved to be embarrassing, and the attempt to meet the Federal requisition on Louisiana for troops by enforcing the draft resulted in considerable discontent. The legislature had refused the Governor's request to provide for a more efficient organization of the militia,[38] and he experienced difficulty in filling the state quota set by the national government. Through the media of the press and circulars, the public was told that there was "no law to authorize and no necessity to justify the requisition." Claiborne was denounced as "the tyrant of the day" and resistance to his orders was advised. Not only were his orders disregarded, but he was presented with resolutions from the noncommissioned officers of several corps protesting against entering the service of the United States either as volunteer or drafted militia. Maintaining that the discontent was being fomented by an "unprincipled faction in this city," he issued orders December 25, 1813, for the enrollment of forces to fill the Federal quota. The orders met with no opposition in the interior, but a spirit of insubordination was manifested in New Orleans. The state Senate declared the requisition illegal and unnecessary; and the House refused to approve the action of the Executive by a majority of one.

On February 21, 1814, Claiborne issued a second proclamation, in which he reiterated the orders of December 25 and warned those refusing to comply with the provisions thereof that they would be prosecuted in accordance with military usage and law regardless of rank. This proclamation further incensed the public and at one time the impeachment of the Governor was contem-

[38] Louisiana *Senate Journal,* 1812 (French ed.), 48–51, 61; Inaugural Address of Claiborne Delivered to the General Assembly, July 30, 1812, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 144–47.

plated. The militia, composed chiefly of Americans from the interior, and stationed at the Magazine Barracks, now protested to the Executive against being mustered into service until his orders of December 25, 1813, and February 21, 1814, were obeyed by the city militia. The tender of their services to enforce the orders was wisely declined, as bloodshed would have resulted. After the refusal of their offer, more than forty men stationed at the Barracks deserted in one night, and Claiborne discharged the remainder of them before they were able to desert.

While there were many persons who really believed the requisition was unnecessary, illegal, and oppressive, there were others whose opposition was due more to personal and political than to public considerations. Those against the Governor found the requisition a fitting opportunity for retaliation and aroused public prejudice against the measure as well as the man. If Claiborne were correct in his surmise that there was a spirit of disloyalty in the city, the opposition party had gone too far in its fight upon him, for the contentions against the requisition had served as a screen behind which the disloyal groups had worked effectively.

There were many citizens in the state who felt that their connection with the United States had become precarious.[39] The British were enlisting the discontented Indians and were concentrating their forces for an attack on Fort Bowyer on Mobile Bay, which was to serve as one of the bases of operations against Louisiana.[40] A large portion of the Spanish element in the state was partial to the English, for it was their plan to wrest

[39] Claiborne to Eligius Fromentin, October 24, 1814, in Rowland (ed.), *Letter Books of W. C. C. Claiborne*, VI, 285.

[40] Martin, *History of Louisiana*, 363.

"Louisiana from the hands of the United States and restore it to Spain." [41] The British appealed to the disloyal element, and, August 29, Edward Nicolls, the commanding officer of the British forces at Pensacola, issued a circular addressed to the "Natives of Louisiana." The citizens were urged to join with the British forces "to assist in liberating from a faithless, imbecile government, your paternal soil." [42] It was openly declared that the Spaniards, who were lawful owners of the land, were to be put in possession and that a Spanish squadron was expected to co-operate with the British fleet.

In addition to securing Fort Bowyer as a base of operations, the British attempted to secure a footing in Louisiana.[43] In the Barataria region, a number of outlaws under the leadership of Jean Laffite lived and engaged in smuggling. These privateers, cruising with letters of marque issued by France and the Republic of Cartagena to prey upon Spanish commerce, had failed to confine their activities to the Spanish trade. On one occasion they had seized goods held by the United States revenue officers and the Federal government had made several futile attempts to suppress them. Claiborne had issued proclamations cautioning the citizens against giving assistance, support, or countenance to these sea rovers, and had offered a reward of $500 for the arrest of Jean Laffite.

41 Claiborne Circular, August 6, 1814, in A. Lacarrière Latour, *Historical Memoir of the War in West Florida and Louisiana in 1814–15* (Philadelphia, 1816), Appendix, xvii–xix.

42 *Ibid.*, Appendix, vii–viii. The Proclamation, in the handwriting of Edward Nicolls, forwarded to Jean Laffite in his letter August 31, 1814, is in Laffite Papers (Bibliotheca Parsoniana, New Orleans, Louisiana). The two Baratarian smugglers spelled their name "Laffite" instead of "Lafitte," the manner usually employed today.

43 Jean Laffite to J. Blanque, September 10, 1814, in Laffite Papers.

On September 3 the British made overtures to Jean Laffite and his Baratarian smugglers.[44] In return for their support and aid, Laffite was offered a captaincy in the British service and the sum of $30,000. A few days to consider the proffer were requested [45] in order that he might communicate with the Americans, secure the release of his brother, Pierre, from jail, and tender his services to the United States.[46] On September 10 Pierre wrote J. Blanque in New Orleans that he was willing to follow Jean's plan to "reconcile us with the government," and enclosed a letter to Claiborne. Blanque was to use his own discretion as to whether or not the letter was to be delivered to the Governor, but he was to "answer quick" for "moments are precious." For if the Governor's answer were unfavorable, he would "instantly leave the country to avoid the imputation of having cooperated toward an invasion" on the Baratarian point.[47]

Upon the receipt of the communication, Claiborne submitted the offer to a council composed of the principal officers of the army, navy, and militia. The decision was that there should be no intercourse with any of "those people." [48] The Governor immediately instigated an expedition against the Baratarians, and with the assistance of United States troops, broke up their establishment and captured many of them. A few, however, among whom were Jean and Pierre Laffite, escaped to the right bank of the Mississippi River approximately

[44] William H. Percy to Nicholas Lockyer, Commander of His Majesty's Sloop, Sophie, August 30, 1814; *id.* to Jean Laffite, September 1, 1814, *ibid.*

[45] Jean Laffite to Lockyer, September 4, 1814, *ibid.*

[46] *Id.* to Claiborne, September 4, 1814, *ibid.*; Latour, *Historical Memoir*, Appendix, xiii–ix.

[47] Pierre Laffite to Blanque, September 10, 1814, in Laffite Papers.

[48] Martin, *History of Louisiana*, 362–63.

thirty miles above New Orleans, known as the German Coast, and found shelter there.

Livingston knew that there was a disloyal element in the city, but he considered it a problem for the constituted authorities to handle. Until the British offer to Jean Laffite became known, he had conceived it no more his duty to interfere in this matter than it was to assist Claiborne in his difficulties over the militia question. The Governor's action in moving against the Baratarians at this particular time perturbed him, for he knew that if Laffite should reconsider and join the British forces, it would be most serious.[49] With a disloyal element operating in the city, and with the Baratarians, who were thoroughly acquainted with all the water routes through the swamps, bayous, bays, and lakes in the vicinity of New Orleans, acting as guides, it would be practically impossible to repel the invaders. At best, general apathy existed; rebellion was probable; the Governor was incapable of coping with the situation; the national government had not fortified the city; the defection of Laffite would cause the wavering to desert to the British; and New Orleans probably would surrender without offering any resistance whatsoever.

He realized the gravity of the situation, and was aware

[49] Livingston to the President of the United States, October 24, 1814, in James H. Padgett (ed.), "Letters of Edward Livingston to Presidents of the United States," in *Louisiana Historical Quarterly,* XIX (1936), 950. Livingston, after informing Madison of the "State of public Opinion" following the citizens' meeting, broached the question of pardoning the Baratarians and enrolling them in the cause of the United States. He stated, "the number of them as well as their influence is great," and gaining their support "would quiet the public mind, and add to our Maratime [*sic*] Strength at least 500 Sailors who have Embraced that kind of life. . . . I prey [*sic*] Sir that you will pardon the liberty I take in making these suggestions which [I] think will be approved by all who are acquainted with the State of this Country."

that prompt, vigorous, although tactful, action must be taken by the loyal element in the city if the British and Spanish propaganda was to be counteracted. He recognized the necessity of ignoring political and personal differences and arousing support among those whose loyalty was under doubt. Livingston, of all the American residents, was the most influential with his class and had more weight with the French population than any other American in New Orleans.[50] He disregarded his prejudices against Claiborne and took the lead in the movement to unite all groups for the support of the nation. This action proved to be one of the most important steps in his career.

He conferred with many of the loyal French and American leaders of the city as to a plan of action. It was decided that a public meeting should be held to consider the question of naming a committee of citizens to cooperate with the state and general government authorities in suggesting measures of defense and in calling out the force of the country in the existing emergency. Pursuant to public notice, a general gathering of citizens was held, and while, according to Claiborne, it was "very thinly attended," [51] the *Louisiana Gazette* stated that, on September 15, "a numerous and respectable meeting of citizens of New Orleans and its vicinity" was held at Tremoulet's Coffee House.[52]

Livingston was made permanent chairman and Richard Relf was chosen secretary. Livingston delivered an eloquent patriotic speech in which he called upon the

[50] John S. Bassett, *Life of Andrew Jackson* (New York, 1911), I, 154.

[51] Claiborne to Andrew Jackson, September 20, 1814, in John S. Bassett (ed.), *Correspondence of Andrew Jackson* (Washington, 1926–1935), VI, 441.

[52] *Louisiana Gazette and New Orleans Daily Advertiser,* September 20, 1814.

people to unite in order to disprove the English charges of disaffection in Louisiana. After calling upon all citizens irrespective of political affiliation "to aid their magistrates by a proffer of their support in the performance of their functions," he submitted five resolutions, which were unanimously adopted. The resolutions called for denying the insidious charges of disaffection; rendering the Union assistance in proportion to the strength of the state; counteracting all attempts to create disaffection and weaken the forces of the country by exciting dissensions and jealousies at the moment union was most necessary; appointing a committee of nine members to co-operate with the civil and military authorities; and calling forth the energies of the country to repel invasion and preserve domestic tranquillity.[53]

Care was exercised in selecting the personnel of the committee which was decided upon prior to the hour of convening. The five Creoles and four Americans selected were chosen because of their pronounced loyalty to the Union and their influence in the city. It was hoped that the adherents of these men would follow their lead and become outspoken advocates of the general government. The list of names that Livingston presented to the assemblage was unanimously approved and the committee membership included Livingston, Jean N. Destréhan, Pierre Foucher, Dusuan de la Croix, George M. Ogden, Benjamin Morgan, Dominique Bouligny, John Blanque, and Augustin Macarty.[54]

Promptly, the committee issued a public statement written by Livingston, which was addressed to their "Fellow Citizens." In the appeal, the public was informed as to the kind and extent of the dangers that threatened the people of Louisiana. The enemy not only

[53] *Ibid.* [54] *Ibid.*

was preparing an attack from without, but was attempting to incite insurrection within, making perfect unity necessary. The citizens of the state, through their representatives in convention had contracted a solemn obligation of becoming an integral part of the United States and "God forbid there should be one disposed to fail in the sacred duties required by fidelity and honor." Those base enough to undervalue their duty and true interest were warned that they would bring down upon themselves and the state dreadful evils; if in their criminal indifference they should favor the enterprises of the enemy, let them recall, it urged, that the millions of Westerners held the navigation of the Mississippi essential to their well-being and would never allow a foreign power to occupy it. Should there be a desertion to the enemy, the address continued, a ruinous war to the state would be the consequence, for the Louisianians would be forced to fight against those very men they had voluntarily chosen for fellow citizens. "Listen to the voice of honor, of duty, and of nature! unite! form but one body . . . defend to your last extremity your sovereignty . . . lives . . . [and] existence of your wives and children." [55]

The very language of the address, the very tone of the appeal shows that its authors had misgivings, probably more than doubts, as to the existence of that unity of feeling they so ardently recommended. Certainly they felt far from assured of the united action of which they affected to have no doubts. The action of the committee, however, was at a propitious time and temporarily served to check the disloyal movement until the defeat of the British at Fort Bowyer and the receipt of the information that General Andrew Jackson, stationed at

[55] *Ibid.*, September 24, 1814: Latour, *Historical Memoir,* Appendix, xxviii.

Mobile, would soon arrive in New Orleans to prepare the defense of the city. These two news items encouraged the wavering spirits, thereby checking the work of the British in their attempt to win over the population of Louisiana.

In this crisis Claiborne's reputation and character suffer by comparison with those of Livingston. The latter put aside personal differences and political prejudices in order that he might serve his country. Neither Madison nor Claiborne had shown him any consideration; the Governor had consistently fought him on every occasion, and the President had leaned with Jefferson in the Batture controversy and had treated Livingston with scant courtesy. Claiborne had been unable to check the disloyalists and was in bad repute throughout the state at that time. Livingston and his committee were accomplishing that which the Governor was unable to do and Claiborne, resentful of their success, was attempting to undermine the influence of these patriotic citizens. In writing to Andrew Jackson concerning the citizens' meeting of September 15, Claiborne complimented the committee, but criticized the manner in which it was selected. Jackson was informed that "many have no wish that Livingston should be a member," and that the Governor was fostering "a joint meeting of the City Council and the Parish Jury for the purpose of cooperating with the constituted authorities and naming a Committee of defense." In this way Livingston's committee would be superseded, "but in the meanwhile it continues to act." [56]

The New Orleans situation was a difficult one and probably it could not have been handled satisfactorily to

[56] Claiborne to Jackson, September 20, 1814, in Bassett (ed.), *Correspondence of Andrew Jackson,* VI, 441.

the various elements in the city. But, Claiborne's vacillating policy and critical manner were not conducive to the arousal of patriotic fervor among the people. His frequent complaint that there were "individuals, on whose friendly disposition to the American Government, I cannot depend," [57] and the open admission of fear that New Orleans "could offer but little resistance to an attack from without," [58] were not calculated to react favorably upon the public morale. His official reports to Jackson were confusing in that they were often contradictory. At one time he would report the militia could not be counted upon and he feared the attitude of the legislature. Later, Jackson would be assured he could count upon the support of the legislature and the quota for militia was filled with patriotic men. "The governor was not unwilling," according to Martin, "to increase his own merit by magnifying the obstacles he had to surmount," and represented as inimical to the country all who did not agree with him.[59] While this judgment may be too harsh, Claiborne's attitude toward Livingston and his committee cannot be excused. His actions reveal a smallness of character that does not comport with a man in his position. He was fully aware of the valuable services these patriotic citizens were rendering the country, but he was too jealous to admit it for fear it would detract from him. His action in reporting to Jackson, "there certainly has been a sensible change in the Public mind," [60] without giving any recognition to the work of the Committee of Public Defense, was petty.

[57] *Id.* to Fromentin, October 24, 1814, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 285.

[58] *Id.* to Thomas Flournoy, September 29, 1813, *ibid.,* 271.

[59] Martin, *History of Louisiana,* 367–68.

[60] Claiborne to Jackson, November 5, 1814, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 310–12.

Claiborne's jealousy of and antipathy for the chairman of the Committee of Public Defense is further illustrated by his reaction to the appointment of Livingston as volunteer aide-de-camp to Jackson, December 17, 1814. Upon the announcement of the personnel of Jackson's aides-de-camp, Claiborne observed to his own aide, Captain B. I. Shaumburgh, "that the general had taken into his confidence men, whose primary object would be to create a Schism between him & me." [61] The Governor's jealousy and love of the limelight prompted him to write Secretary of War Monroe and suggest that Jackson be instructed to place him in command of the militia. While admitting that he had "but a limited Knowledge of Military affairs" he would be happy "to be honored with a Commission" as second to Jackson in command.[62] His failure to receive the commission and his feeling that Jackson ignored him led to strained relations between the General and the Governor, which Claiborne maintained were due to the intrigues of Livingston.

As chairman of the Committee of Public Defense, Livingston had frequent correspondence with General Jackson. Both had served in the Fourth Congress and they were two of the twelve members of the House who, on December 15, 1796, voted against the adoption of the address in reply to President Washington's last speech to that body. Their relations were harmonious and continued to be most cordial during the following Congress when Jackson was in the Senate. For several years following Jackson's resignation from the upper house of Congress in June, 1798, they corresponded intermittently. Conditions, therefore, were favorable to the de-

[61] *Id.* to B. I. Shaumburgh, October 1, 1815, *ibid.*, 371.
[62] *Id.* to Monroe, December 9, 1814, *ibid.*, 321–23.

velopment of a close and enduring friendship between the two, and the renewal of acquaintance at this time proved to be mutually advantageous.

On September 18, three days after the public gathering at Tremoulet's Coffee House, the committee communicated with Jackson, giving him certain information with regard to the local vulnerable points that supplemented the material included in the maps. Jackson was informed that they were sure they "need make no apology for the liberty" taken and, furthermore, they believed "that steps will immediately be taken to comply with our request" with regard to the plans for the defense of the city.[63] On November 5 Livingston informed Jackson that the greater part of the citizens were in sympathy with the steps the General had taken for the protection of the city, and he offered the committee's opinion as to what would constitute proper military protection.[64] On November 21 Livingston informed Jackson that the legislature had appointed a committee of defense, but he was "greatly mistaken if anything efficient [would] be done, unless by your agency." He gently hinted that it might be wise for the General to authorize him officially to confer with the committee for the good effect it would have. He recommended A. Lacarrière Latour as an excellent engineer and informed Jackson that should there be need of "a man of this description" he could do no better than to secure Latour's services.[65]

When Jackson arrived in New Orleans December 1,

[63] From Committee for the Safety of the City of New Orleans to Jackson, September 18, 1814, in Jackson Papers (Division of Manuscripts, Library of Congress), XXIII, 2229–30.

[64] Livingston to *id.*, November 5, 1814, *ibid.*, XXVI, 2615.

[65] *Id.* to *id.*, November 21, 1814, *ibid.*, Ser. II, Vol. II, 57.

1814,[66] Livingston, as chairman of the citizens' Committee of Public Defense, was present with the Governor and the other authorities to welcome the General officially to the city. Jackson's first day in the city was a busy one. Following the official welcome, he dined at the Livingston home,[67] reviewed the battalion, and addressed the troops. In his speech, which was rendered in French by Livingston, Jackson expressed pleasure and satisfaction with their work and assured them of his determination to save New Orleans. Following a tour south and east of the city,[68] he made an effort to prepare it against attack.[69] In compliance with his request, Claiborne, December 14, recommended to the legislature that it suspend the writ of habeas corpus for a limited time. On December 16 the Governor suggested to the General Assembly that it recess for fifteen or twenty days.[70] Both requests were refused on the grounds of inexpediency and the latter for the additional reason that conditions might arise when the intervention of the legislature would be necessary.[71] The obstinacy of that body reacted unfavorably upon Jackson and he immediately declared martial law.

On December 18 Jackson again reviewed the troops that were stationed in New Orleans, and following the inspection, Livingston read the General's eloquent, complimentary, and patriotic address to them.[72] It was a

[66] Claiborne to Monroe, December 9, 1814, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 321.

[67] Hunt, *Life of Edward Livingston,* 197–98.

[68] Latour, *Historical Memoir,* 54.

[69] *Ibid.,* 54–55.

[70] Louisiana *Senate Journal,* 1815, p. 35.

[71] Martin, *History of Louisiana,* 371.

[72] Jackson's Address to the Troops, December 18, 1814, in Bassett (ed.), *Correspondence of Andrew Jackson,* II, 118. "On Sunday, the 18th December, general Jackson reviewed the militia of the city, the battalion commanded by major Plauche, and a part of the regiment of men of

timely and skillful appeal to the diverse sentiments and motives of the various groups. "General Jackson," wrote Latour, "had electrified all hearts; all were sensible of approaching danger; but they awaited for its presence undismayed." New Orleans took on the appearance of a camp; and concord prevailed among all ranks and conditions of people.[73] Jackson had wrought a transformation; confidence had displaced gloom, despondency, and distrust. Apathy was fast disappearing and concerted action to repel the invaders was taking its place. The work of the citizens' Committee of Public Defense was beginning to show tangible results.

Livingston was not noted for his modesty when the question of promoting his welfare was involved. On September 21, 1813, he had written Jackson requesting an appointment as aide-de-camp without pay. The request was made on the grounds that Jackson's duties would probably detain him in Florida, and that the applicant might be of service in Louisiana performing the duties of a secretarial aide. He was desirous of rendering such services to his country as he could "without abandoning a place where my profession is necessary to the support of my family." [74] Jackson's "ideas of military etiquette would not admit the solecism of an Aide de Camp detached from Head Quarters," [75] but this was no longer applicable to the situation after his arrival in the city; consequently, Livingston renewed the request and this time it was granted.

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colour. Being drawn up on their respective parades, the following addresses were read to them by Mr. Livingston, one of his aids." Latour, *Historical Memoir,* Appendix, xxxvii.

[73] Latour, *Historical Memoir,* 72–73.

[74] Livingston to Jackson, September 21, 1814, in Jackson Papers, Ser. II, Vol. II, 35.

[75] Jackson to Livingston, September 30, 1814, in Bassett (ed.), *Correspondence of Andrew Jackson,* II, 65.

The Livingston trait of providing for all of the family connections now evidenced itself. Immediately following his assignment as voluntary aide, with the rank of colonel, Livingston secured the appointment of his brother-in-law, August de Castera Davezac, as judge advocate. Upon Livingston's request, his son Lewis, visiting in New Orleans, received a commission of captain and served as an engineer under Major Latour.[76]

Throughout the campaign, Livingston served as Jackson's aide-de-camp, military secretary, orator, and confidential advisor. He and his son [77] both saw active duty and during the battle of December 23, Livingston was under fire. In the afternoon he went aboard the ship *Caroline* to explain Jackson's plan of attack to the commander of the vessel. In the night battle which followed, he was almost constantly exposed to the fire of the enemy while transmitting on horseback in all directions the orders of the General. He and the other aides were cited for bravery by Jackson in his official dispatch to Secretary of War Monroe. The report under date of December 27, 1814, recited that the General's aides-de-camp, Thomas L. Butler, Captain John Reid, "and Messrs. Livingston, Duplessis, and Davesac who volunteered their services faced danger wherever it was to be met, and carried my orders with the utmost promptitude." [78] Again, in his General Orders of January 21, Jackson availed himself of the opportunity to commend publicly his aides for their services and to assert that

[76] Livingston to Jackson, December 14, 1814, in Jackson Papers, Ser. II, Vol. II, 66; New Orleans *Louisiana Courier,* February 18, 1822.

[77] Livingston, under date of January 6, wrote to his sister, Mrs. Montgomery, that "Lewis has been in two actions, and has behaved with the utmost gallantry." Quoted in Hunt, *Life of Edward Livingston,* 199.

[78] Jackson to Monroe, December 27, 1814, in Bassett (ed.), *Correspondence of Andrew Jackson,* II, 128.

they "have merited the thanks of the general by the calm and deliberate courage they have displayed on every occasion and in every situation that called it forth." [79]

Shortly after the arrival of Jackson in the city, Jean Laffite renewed the offer of his services to the United States government. Jackson had determined to have nothing to do with the "pirates and infamous bandits" unless it was to have them hung. When the proffer of their services reached him, his first inclination was to refuse it curtly; but since his arrival in Louisiana, he had come to recognize more fully the critical situation that existed. Livingston was acquainted with the Laffites, as he and John R. Grymes had been retained as their attorneys at a fee of $20,000 each to defend the smugglers in the Federal District Court.[80] Probably he was able to convince the General as to the value of the Baratarians and point out the results should they go over to the British. In any event, the fiery commander reversed his decision, accepted their services, assigned the leaders to important commands, and experienced no regret for his actions in the premises.[81] In the meanwhile, the Federal government dropped all judicial proceedings against them.[82]

[79] General Orders, 7th Military District, January 21, 1815, in Latour, *Historical Memoir,* Appendix, clxxxix.

[80] Charles Gayarré, "Historical Sketch of Pierre and Jean Lafitte," in *Magazine of American History* (New York), X (1883), 294–95.

[81] "Thus situated, I was advised that the Baratarians had flints and some arms, and were willing to surrender themselves and all their supplies on condition of promise of pardon on good conduct. I directed Mr. Livingston, my voluntary aid, to accept them, and give the pledge." Jackson to Samuel L. Southard, March 6, 1827, in Bassett (ed.), *Correspondence of Andrew Jackson,* III, 347.

[82] Claiborne to John Dick, February 11, 1815, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 338. Livingston was probably responsi-

Claiborne's apprehension that the legislature would aggravate the situation and further complicate matters during the crisis was more than justified. The Assembly was jealous of its authority and resentful of Jackson's action in declaring martial law. Certain members of the legislature were very officious, thereby adding to the difficulties that confronted Jackson and Claiborne. During the battle on December 23, it was rumored that Jackson had given positive orders to fire parts of the city if the British forced his ranks. A group of the legislators, acting in an unofficial capacity, called upon the officer left in command in New Orleans to ascertain the truth of the "report." The officer properly declined to make any statement [83] but informed Jackson of the incident. Five days later, during the engagement of December 28, news reached Jackson on the battlefield that "the assembly were about to give up the country to the enemy." [84] Although stating he did not believe the report, the General nevertheless sent word to Claiborne that "if true; to blow them up." [85] Following the receipt of Jackson's message, the Governor ordered the doors of the statehouse closed.[86] He later maintained that under the circumstances he had acted with prudence as the legislature was under suspicion and there might have been a general commotion had they met that day.[87] The order was revoked the following day and, as a public announcement of its position and temper, the first act of the General Assembly was to appoint a joint committee to investigate and report the causes for the order.[88]

ble for Jackson's reversal, but his letter to Madison, October 24, 1814, referred to above, may have influenced the Federal government to drop all judicial proceedings against the Baratarians.

[83] Martin, *History of Louisiana,* 376.

[84] Louisiana *Senate Journal,* 1814, p. 37. [85] *Ibid.*

[86] *Ibid.,* 36. [87] *Ibid.,* 40–41. [88] *Ibid.,* 36.

Evidently Claiborne had some basis for doubting the loyalty of the legislature for there was a more or less general suspicion as to the allegiance of that body. The prevalence of this misgiving caused both Claiborne and Jackson to desire the adjournment of the General Assembly. Their fears were well founded; yet, in spite of the legislature's policy of obstruction, the American Commander was successful in his encounters with the British forces on December 28, 30, and 31. The New Year's Day battle was hotly contested; Jackson was unable to force a retreat of the British but he did check them. During the first week of the year skirmishes occurred daily. On January 8 fighting began a little before daybreak and the feeling pervaded both armies that the ultimate success of the campaign depended upon the outcome of the day's battle. The British began the attack only to be met with the withering fire of Jackson's Tennesseans and Kentuckians. Replacements continued to fill the constantly thinned ranks of the British until their commander-in-chief and other high ranking officers fell mortally wounded. The English soldiers became demoralized and refused to continue the attack. The enemy held its position, however, until January 9, when the commanding general, John Lambert, under a flag of truce, notified General Jackson that the British were evacuating their position on the Mississippi River and for the present were discontinuing all movements against New Orleans.

The defeat and retreat of the British relieved the tension in New Orleans and was followed by public celebrations in honor of victory. The civilian population desired the removal of all military restrictions, but Jackson refused to relax his vigilance as he feared the British

would renew their attack on the city. The legislators were particularly restive and showed their pronounced resentment toward Jackson before the General Assembly adjourned sine die on February 6. That body voted an expression of thanks to everyone who had in the slightest degree contributed to the defense of the state except General Jackson. To make their action more pointed, the Senate rejected the House bill which appropriated $800 for a saber to be presented to the General as a testimonial of gratitude upon the part of the state.[89] The legislature had evened scores with the Commander.

Two days prior to the adjournment of the legislature Jackson dispatched Livingston, R. D. Shepherd, and Captain Maunsell White, under a flag of truce, to negotiate with Vice-Admiral, Sir Alexander Cochrane, and General Lambert for an exchange of prisoners. The British had planned a second attack on Fort Bowyer and were on the point of sailing when the Americans arrived. As a precautionary measure, the Livingston party was detained on board a British vessel, made the trip to Mobile Point, and were present at the surrender of Fort Bowyer, February 12.[90] The next day the British received official notification of the signing of the peace treaty[91] and that same day Livingston departed for home, arriving in New Orleans, February 21, after an absence of fifteen days.[92] Jackson approved of Living-

[89] *Ibid.*, 76–77.

[90] Vice-Admiral, Sir Alexander Cochrane to Jackson, February 12, 1815, in Bassett (ed.), *Correspondence of Andrew Jackson,* II, 164.

[91] Jackson to Major General Lambert, February 26, 1815, in Jackson Papers, Ser. II, Vol. II, 117.

[92] *Louisiana Gazette and New Orleans Daily Advertiser,* February 21, 1815.

ston's arrangements with Cochrane and dispatched the first contingent of British prisoners on February 22,[93] although official notification of peace did not reach him until March 13,[94] twenty days after Livingston's return. Immediately upon receipt of the official advices of the peace treaty, Jackson notified General Lambert that Livingston was empowered "to make such arrangements for the restoration required by the 1st article of the treaty and to receive all places in your possession, as well as the slaves mentioned in your former letters." [95]

The delay of the Washington authorities in notifying Jackson of the peace treaty until March 13 was most unfortunate as it was during the interim, February 13–March 13, that the General pursued the policy which resulted in creating the local strife that should and could have been avoided. It was known in New Orleans from the time of Livingston's return from Fort Bowyer that peace had been made and the American newspapers which reached the city contained this same information. Nevertheless, Jackson refused to countenance the reports and continued to keep the city under martial law.[96] Maintaining that the story was a ruse of the British, he suppressed one issue of a local paper that carried the news and issued orders that such statements were to be

[93] "In conformity with arrangements entered into with Adml. Cochrane by my aid de Camp, Mr. Livingston, I dispatched from this place on the 22d. Inst. four hundred sixty British Prisoners. . . . Others will be sent to complete the exchange so soon as they arrive from Natchez." Jackson to Lambert, February 26, 1815, in Jackson Papers, Ser. II, Vol. II, 117.

[94] Claiborne to ———, March 15, 1815, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 350.

[95] Jackson to Lambert, March 13, 1815, in Bassett (ed.), *Correspondence of Andrew Jackson,* II, 190.

[96] *Louisiana Gazette and New Orleans Daily Advertiser,* February 21, 1815.

excluded from the New Orleans papers until official notice was received from the government. There had been an insistent demand for mustering out the militia prior to February 13 and each day the French citizens who had volunteered for service became more restive. At first, the American Commander attempted to appease the foreign element by discharging those who presented a certificate of nationality from the French Consul; but when the number presenting certificates became large, the General became suspicious of connivance and discontinued the practice. When this policy was adopted there was a vigorous protest from the French citizens. Jackson answered this remonstrance, February 28, by issuing a General Order commanding all French subjects to retire within three days to the interior not nearer than Baton Rouge.

The French Consul was greatly concerned at developments and appealed to Claiborne for assistance in securing the release of his fellow countrymen.[97] The Governor was helpless but he suggested that relief might be secured if application were made to the courts.[98] The Consul's activity incensed Jackson and he ordered the representative of France to leave the city. This order aroused the resentment of the French citizens in Louisiana and they retaliated by charging Jackson with hating the French and surrounding himself with advisers who were newcomers notorious for their prejudice against the old population. Louis Louaillier, a member of the legislature, severely criticized the military authorities, in an article published in the *Courier,* for re-

[97] Claiborne to Monroe, March 2, 1815, in Rowland (ed.), *Letter Books of W. C. C. Claiborne,* VI, 349–50.

[98] *Id.* to *id.,* February 10, 1814 (evidently misdated, should be March 10, 1815), *ibid.,* 344–45; New Orleans *Louisiana Courier,* March 3, 1815.

taining citizens of France in the militia and he called for a recision of the order requiring the French subjects to retire to the interior. In addition, he asserted that those Frenchmen who had become American citizens, as he had, believed that Jackson's policy was actuated by a feeling of dislike for the French population.[99]

Louaillier's letter infuriated Jackson, and on March 5 he had the legislator arrested as a spy. Judge Hall, of the United States District Court, granted Louaillier's attorney a writ of habeas corpus and immediately the General ordered the arrest of the Judge on the charge of aiding, abetting, and inciting mutiny in his camp. For good measure, Jackson confined Hall in the same room with Louaillier. By threats he secured from the Clerk of the United States District Court Louaillier's petition, on the back of which Hall had written the order for the issuance of the writ.[100] He refused to return it on the grounds that the Judge had committed forgery in changing the date from the fifth of March to the sixth. The situation was further aggravated when John Dick, United States District Attorney, was arrested for having a writ in favor of Hall served upon the Commander.[101]

Claiborne understood the temper of the people and realized that unless Jackson maintained a conciliatory attitude toward the public a rift would occur between the military leader and the civilians. As early as the last of January he attempted to forestall trouble by requesting the Commander to disband the militia and to raise the martial law,[102] but his request received scant consideration. Very wisely, the Governor then instructed his At-

[99] New Orleans *Louisiana Courier*, March 3, 1815; Gayarré, *History of Louisiana*, IV, 585–89.

[100] Martin, *History of Louisiana*, 395. [101] *Ibid.*, 396.

[102] Claiborne to Jackson, January 31, 1815, in Rowland (ed.), *Letter Books of W. C. C. Claiborne*, VI, 337.

torney General, Etienne Mazureau, to render whatever legal assistance he could in the premises. Probably smarting from Jackson's summary rejection of his attempts at co-operation, Claiborne informed Mazureau that he could "no longer remain a Silent Spectator of the prostration of the Laws," as the plea of necessity had ceased to have any justification.[103] Jackson's popularity was waning as the result of his arbitrary rule and the opportunity was propitious for the Governor to regain his popularity. Claiborne should not be harshly criticized for his effort to protect himself by stating his position upon vital questions or, for that matter, for his attempt to rehabilitate his political fortunes; but his actions which indicated a preparation to resist the Federal authority exercised by the military representative were hardly justifiable. The people anticipated that an open breach between the General and the Governor would occur when Claiborne issued a circular criticizing Jackson's actions, accusing him of being particularly resentful of the "Executive," and of observing a "Course of Conduct" that could not be excused easily, "much less justified by those who feel a proper regard for the rights of others." [104] The accusations were probably true but inadvisable for the Chief Executive of the state to make under the conditions. The public became excited over the prospect of a conflict, and the Governor was heard to declare that difficulties would "be shortly witnessed in New Orleans." [105]

The situation was tense. Numerous public meetings were held in protest against the General's actions and at one of the gatherings it was suggested that the United States Marshal be invited to call out the *posse comitatus*

[103] *Id.* to Etienne Mazureau, February 24, 1815, *ibid.*, 339.
[104] Circular of W. C. C. Claiborne, February ?, 1815, *ibid.*, 346–47.
[105] Martin, *History of Louisiana*, 399.

of the district to support the judiciary. The counsel of the more conservative leaders prevailed and the only act of violence was the destruction of an illuminated portrait of Jackson which hung in the Exchange Coffee House. The military forces considered this an insult to their leader and for a time open conflict was imminent. A number of the military officers required the proprietor of the coffee house to replace the picture and "illuminate the hall in a more than usual manner." [106] Troops stood in readiness to march upon summons; and New Orleans had become like a magazine of gunpowder upon which the least spark would have produced a frightful explosion.

Many persons suspected Livingston of being responsible for the policy adopted by Jackson and accused him of upholding the very tyranny which he opposed so courageously in 1806. Quite naturally they inquired why was this champion of civil liberties, who had opposed Wilkinson, now assisting Jackson when the situations were identical—unless it was that Wilkinson was then thwarting his desires and Jackson was now favoring them? In an effort to direct attention to his inconsistency his opponents admonished the populace to follow the counsel that Livingston had given at the time of Burr and offer "no pretext" to General Jackson to indulge "in his favorite acts of violence." [107]

Although there were extenuating circumstances, Livingston was in no position to refute the charges *in toto;* consequently, he allowed the accusations to pass unanswered. He had made his position on the question of martial law clear to Jackson and never reversed himself on that question. "My opinion," he had written to Jackson, "is that such proclamation is unknown either to constitu-

[106] *Ibid.*, 399–400. [107] Gayarré, *History of Louisiana,* IV, 599–601.

tion or laws of the United States." Martial law, he ruled, could be justified only by the necessity of the case, and "the General proclaims it at his own risque under his own responsibility, both to the government and to individuals." On the next point, however, Livingston reversed his position of 1806 for he maintained that under the process of law "all persons capable of defending the country are subject to such laws and may be tried during its continuance by virtue of such law." [108] Irrespective of the fact that Jackson had disregarded his advice and had assumed full responsibility for his action in declaring martial law, the General was proceeding in accordance with Livingston's opinion as to the legal right to arrest and try Louaillier during the continuance of martial law. Had he been able to refute the charges it would have been inadvisable to do so while remaining a member of the General's staff. Such action would have been construed as a disagreement with his chief and disloyalty to his superior officer. Furthermore, he felt it was inexpedient to break with Jackson; therefore, he made no attempt to silence his critics.

Louaillier's case came before the court-martial March 7; the General disbanded the militia March 8; [109] and Louaillier was acquitted March 10. Jackson, nevertheless, disregarded the court-martial decision and refused to release either the legislator or the Judge, and the day following he had Hall removed from the city and forbade his return until official notice of the peace treaty was received. Upon the arrival of the notice, March 13, the

[108] Edward Livingston, Opinion as to Martial Law, in Jackson Papers, XXXIV, 3073–74.

[109] "General Orders. Headquarters, 7 military district, adjutant-general's office, New Orleans, 8th March, 1815," in Latour, *Historical Memoir*, Appendix, xcix–c.

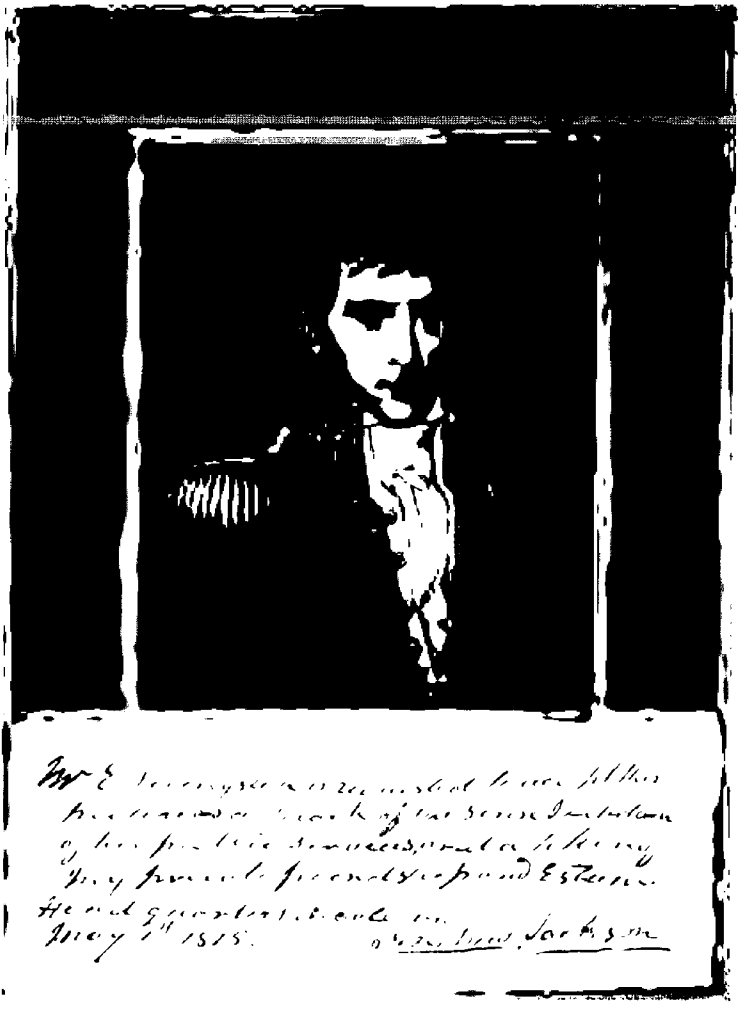
General ordered the release of the prisoner and allowed the Judge to return to New Orleans.[110] The United States District Attorney then proceeded with action against Jackson on the charges of contempt of court by obstructing the cause of justice, depriving Louaillier of protection, and seizing and holding records of the court. On the return date of the warrant, Captain John Reid, the General's only counsel in court,[111] presented an answer to the rule in the form of Jackson's sworn statement which had been prepared by Livingston.[112]

In the brief, Jackson protested against the unconstitutionality and illegality of the proceedings and denied the authority of the District Attorney to institute proceedings against him or of the Court to punish him for contempt on the grounds that if contempt had been committed, it had not been in court. He maintained that statutory offenses should be prosecuted only on indictments and before a jury. He held that the proclamation of martial law was justified on the grounds of the Governor's reports of disaffection of the people; of the opposition of the legislature; of a seditious portion of the population; and of the little hope of success except from the regular force to be sent by the United States. And finally, he contended that under the rule of martial law the publication of a libel made the author a soldier, his offense cognizable by

[110] *Ibid.*, cii.

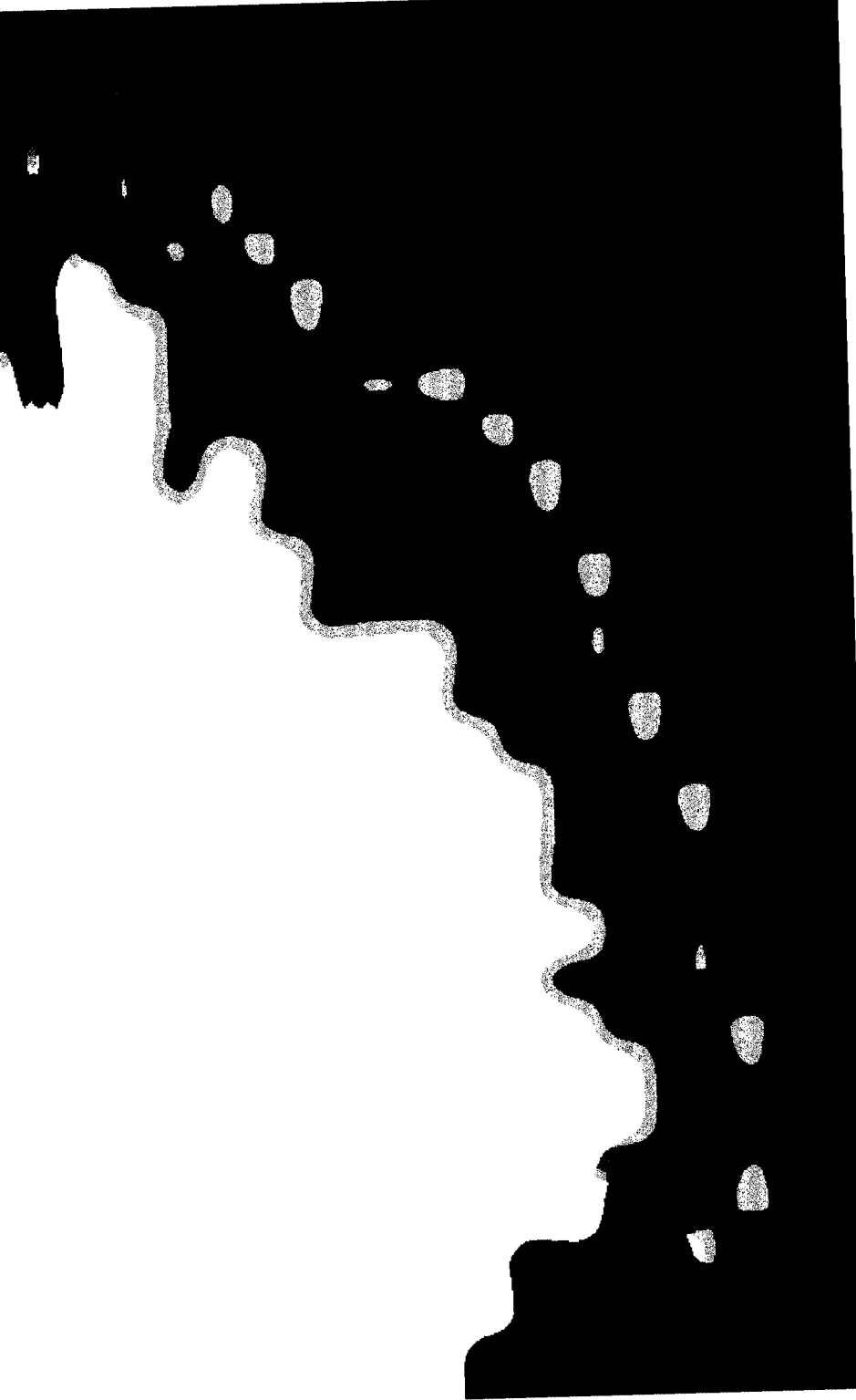
[111] "We refrained during its pendancy, from noticing a judicial proceeding on the part of the United States against Major General Jackson which excited so much interest and which terminated last week. . . . At the commencement of the proceedings Mr. Livingston and Mr. Duncan acted as Counsel for General Jackson, but stated in the progress that the general was represented solely by Major Reid." *Louisiana Gazette and New Orleans Daily Advertiser,* April 8, 1815.

[112] Hunt, *Life of Edward Livingston,* 208. Hunt stated he had seen the rough draft of this brief in Livingston's handwriting, much erased and interlined.



GENERAL ANDREW JACKSON

FROM AN ALEXANDER H. RITCHIE ENGRAVING OF THE MINIATURE ON IVORY BY JEAN FRANÇOIS VALLÉE



a court-martial, and the imprisonment of the presiding judge a matter of necessity. The Court, however, decided against Jackson and he gracefully accepted the sentence of a thousand dollar fine and costs of court.[113]

A reaction in favor of Jackson occurred before his departure April 10, and by the end of spring conditions in the state were returning to normal. The past eighteen months were important ones for Jackson and Livingston; the incidents of this period formed an important link in the chain of events that resulted in elevating one to the presidency and starting the other again on the road to national prominence. Each assisted the other to attain these results; and each continued to respect the outstanding qualities, as well as to exhibit a charitableness toward the weaknesses, of the other. Of the two, Livingston profited more from the association; he always gave his chief the same efficient, conscientious service that typified his work as aide-de-camp; the General, in return, rewarded his friend with the highest political honors at his disposal.

[113] *Louisiana Gazette and New Orleans Daily Advertiser,* April 8, 1815.

Chapter X

A LOUISIANA LEGISLATOR

THE war hardly interrupted the prosperity or hindered the development of the vast resources of the state. Neither the yellow fever epidemics nor the floods of the Mississippi River appeared to have retarded the influx of persons from the other states of the Union. Immigrants continued to arrive in great numbers and the population of the commonwealth experienced a phenomenal increase. New Orleans was developing into a great trade center; thousands of ships visited its wharves annually; and it was the natural market for the upper Mississippi region. The foreign, intercoastal, and Mississippi River trade were the sources of great wealth and provided the financial sinews necessary to the development of the city and state.[1] The agricultural development supplemented the wealth derived from trade and was the principal occupation of the people living outside of New Orleans.

Louisiana was giving her attention to and directing her energies toward internal expansion. Plans were being formulated for the construction of roads, the building of canals, the erection of charitable institutions, and the establishment of a system of public schools and educational institutions of higher learning. The general concern in

[1] George E. Warring, Jr., and George W. Cable, *Social Statistics of Cities, History and Present Conditions of New Orleans, Louisiana* (Washington, 1881), 43–45.

the social, economic, and industrial development of the state did not diminish the interest or lessen the active participation of the people in political affairs. This interest continued to be positive and vibrant.

Conditions in New Orleans at this period were never quiet for very long at a time. In certain quarters, the Governor continued to be severely criticized for placing the militia under the command of a Federal officer. He attempted to justify his actions and silence his critics in his next annual message to the General Assembly on January 3, 1816. Unfortunately for him, he made reference to the violent measures of Jackson and thereby aroused the resentment of many of the General's friends. In replying to his message, the House of Representatives took advantage of the opportunity to rebuke the Governor by expressing its "gratitude to Heaven, to the hero who had led the forces, and to the men who served." It further asserted that "where there is so much to admire, we are not disposed to dwell upon some deeds which we cannot approve." [2] Claiborne, possessing sufficient political sagacity to realize that the House had spoken the final word upon the subject, wisely allowed the matter to drop.

Under American rule, he was the only executive the people of Louisiana had known, and on the whole he had been an excellent administrator. His thirteen years of service as governor would draw to a close at the end of 1816, and a constitutional provision prohibited his reelection. He was not eager to retire to private life but sought the position of United States senator. The election for the six-year term was to be held in January, 1817, and his annual message to the General Assembly in November, 1816, was an excellent campaign document.[3] It

[2] Louisiana *House Journal*, 1816 (French ed.), 5–11, 16.

[3] Louisiana *Senate Journal*, 1817, pp. 5–7.

was most conciliatory, tactful, and complimentary; and even though Claiborne's candidate for governor was not elected, there was still a majority of both houses in the new Administration favorable to his candidacy. The election was held January 13,[4] but unfortunately he never took his seat, as he died November 23 of the same year before Congress reconvened. Henry Johnson, who later served as governor of the state, was elected to succeed him in the Senate.

The 1816 gubernatorial campaign was hard fought and closely contested, and the outcome was in doubt until the final election returns were received. The Claiborne or the American faction supported Joshua Lewis; and the Creoles nominated as their candidate Jacques Villeré, one of their own countrymen. The causes of the rivalry existing between the native citizens and those of foreign origin were fundamental and not restricted to politics. In the absence of an issue, all bitterness would seem to have disappeared; but latent prejudices would be brought into open conflict upon the slightest provocation. The "ancient" Louisianians felt they had been ignored; they were resentful of the American domination; and they were desirous that some of the more important positions being held by the Americans should go to members of their own group. This division in the body politic that remains to the present day became definitely marked during the campaign. The West Florida, the central, and the northern sections of the state supported Joshua Lewis; New Orleans and South Louisiana gave their votes to Villeré.

Livingston, having acquired considerable property in Plaquemines Parish, adjoining New Orleans on the south, changed his official domicile to this rural parish. In 1816

[4] *Niles' Weekly Register,* XI (1816–1817), 432; Louisiana *Senate Journal,* 1817, p. 28.

he was a candidate for the state legislature and was opposed by H. Forstall. Livingston supported Villeré and his own contest proved to be as close as the gubernatorial race. The referendum for governor gave Villeré 2,314 votes and Lewis 2,145.[5] The General Assembly ratified the action of the people by electing Villeré governor by a vote of forty-three to four.[6] Villeré carried Plaquemines Parish, but Livingston was defeated by a vote of forty-eight to forty-three.[7] Several factors contributed to his defeat, but the most important was the Batture question. Although the citizens of Plaquemines had not been affected in any way by this controversy, it was used so effectively during the campaign that his alignment with the dominant political faction in the state failed to counteract its effect.

In 1818, when party spirit seemed to have disappeared almost entirely, Livingston announced his candidacy for representative in Congress.[8] Josiah S. Johnston, Thomas Butler, and Fulwar Skipwith also were candidates for the position. The geography of the district was unfavorable to Livingston's candidacy and his only hope for election was dependent upon his three opponents dividing the votes of the interior section. The district included all of that portion of Louisiana east of the Mississippi River and west of the river from Rapides Parish to the Gulf of Mexico. He recognized the weakness of his candidacy in the interior but counted upon a good majority in New Or-

[5] Louisiana *Senate Journal,* 1817, p. 4. As early as 1813 Livingston had acquired property in Plaquemines Parish, for his property in that parish was advertised for sale as the result of nonpayment of taxes for the year 1813. New Orleans *Louisiana Courier,* November 18, 1814.

[6] *Ibid.,* 5.

[7] *Louisiana Gazette and New Orleans Mercantile Advertiser,* July 8, 1816.

[8] New Orleans *Louisiana Gazette,* June 15, 1818.

leans and South Louisiana where the Creole vote was heavy.

The campaign aroused all of the old prejudices and animosities and a very bitter contest followed. The *Louisiana Gazette* remarked, "Never perhaps was an election marked with such low intrigue as that which commences this day." [9] The result proved that Livingston had misjudged the situation and missed his calculation. Skipwith's candidacy proved to be unpopular, and he received a very small vote. Livingston failed to draw votes from the other two candidates in the interior, but his opponents cut heavily into his New Orleans following, where their combined vote totaled almost one half his vote in the city.[10] While he carried Plaquemines Parish by a majority of twelve to one,[11] the West Florida district and the territory west of the Mississippi went almost six to one against him, with Butler leading him eleven to one in Baton Rouge.[12] The tabulation of the election returns gave Butler a vote of 1,866 to 1,384 votes for Livingston. Johnston ran third and Skipwith was a very poor fourth.[13]

In 1820 Livingston again was a candidate for member of the state legislature from Plaquemines Parish.[14] Pierre Derbigny, Jean N. Destréhan, Abner L. Duncan, and Thomas B. Robertson were the candidates for governor. Robertson and Livingston had led the fight against Claiborne in 1812 and later in the same year they were opposing candidates for Congress. The former won the election and served the state at Washington for three terms. Livingston now supported Robertson for governor and both were elected.[15] Finally, twenty years after resign-

[9] *Ibid.*, July 6, 1818. [10] *Ibid.*, July 9, 1818. [11] *Ibid.*, July 25, 1818.
[12] *Ibid.*, July 21, 1818. [13] *Ibid.*, July 25, 1818. [14] See n. 5 *supra.*
[15] *Niles' Weekly Register,* XIX (1820–1821), 280. Robertson received 1,903, Derbigny 1,187, Duncan 1,031, and Destréhan 627 votes. Louisiana *House Journal,* 1820 (French ed.), 4; New Orleans *Louisiana Courier,* July 7, 1820.

ing his seat as Representative in Congress from New York, Livingston, the perennial, or rather biennial, candidate for office, was successful in securing an elective office.

The victory started Livingston again upon the political road to national prominence, where he attained greater distinction and renown than perhaps he had contemplated. He was interested in legislative procedure and devoted much of his time and talents to the service of the state. By training and experience he was admirably fitted for the work and brought to the job the benefit of his sound judgment. He was one of the most important and useful members of that body and might have rendered the state far greater service had he not returned to the field of national politics.

His desire for office was accentuated by the recent success at the polls. The General Assembly convened in New Orleans, November 20, 1820, and on the opening day of the session he was quite conspicuous. He was nominated for the position of speaker, but received only two of the twenty-eight votes cast, and Armand Beauvais of Pointe Coupée was elected.[16] However, he was assigned to numerous special committees and served as chairman of several of them. In addition, he was appointed chairman of the important standing Committee of Ways and Means.

The question of eligibility of the member-elect from Plaquemines Parish was raised by his political opponents. One of the instigators of the movement to deny Livingston his seat in the House was James Wilkinson who had returned to the state and was living in Plaquemines Parish. He had never forgiven the Representative-elect for his actions during the Burr episode and was attempting to use a possible technicality to even scores. On November 23 the Committee on Elections made a favorable report

[16] Louisiana *House Journal*, 1821 (French ed.), 1.

as to the credentials of all the members but stated that some question relative to residence had been raised with regard to the gentleman from Plaquemines.[17] Philip Caldwell of Catahoula Parish attempted to have the House disregard that portion of the report relating to Livingston and seat him, but a select committee of five was appointed to investigate the charges and further examine the credentials of the member in question.[18]

The day following, November 24, Wilkinson presented a memorial to the legislature in which he alleged that Livingston was not qualified to occupy a seat in that body. He should be disqualified on the constitutional grounds that during the period of a year immediately prior to the election he had not resided in the district from which he was elected. In addition, the member-elect during this one year period had not owned landed property to the value of $500. The memorial precipitated considerable discussion, but was finally referred to the special committee of five.

The committee's signed report was submitted through its chairman, David A. Randall, November 24. The House was informed that a thorough examination of the charges preferred by Wilkinson had been made and that the report and recommendations were based upon the testimony of qualified witnesses who had been subpoenaed. According to the testimony of Judge Joshua Lewis of the first District Court, he had been a resident of the state since 1807, and, during this time, he had been acquainted with Livingston. Often it had been necessary for him to continue cases in his court, where Livingston was one of the attorneys, as he knew Livingston was visiting his plantation in Plaquemines Parish. Thomas B. Kennedy, clerk of the Court, corroborated the state-

[17] *Ibid.*, 8.

[18] *Ibid.*, 8–9.

ments of the Judge, and numerous other witnesses substantiated the fact that the gentleman had complied with the election requirements. Any number of persons had stated that the Representative had, four years previous, declared publicly his intention of changing his legal residence and, at that time, had been a candidate for the position to which now he had been elected. The investigation showed that he was the owner of a plantation where he often entertained his guests, and on which was a steam-operated sugar mill. While the title to the hundred-thousand-dollar property was clouded by a conditional deed of sale, it was nothing more than security. He owned other property in the parish valued at more than the minimum constitutional requirement and his house in the city was rented property. By a vote of twenty-two to twelve, the recommendations of the committee were accepted and Livingston was officially declared a member of the House.[19]

Livingston was quite active on the floor of the House during the first session, but in the second he confined his activities largely to committee work. During the first few days of the session, while his eligibility was still under consideration, he offered practically one half of the resolutions and motions that were presented. Most of them pertained to such legal matters as reforms in civil law practices, criminal law procedures, and the judiciary.

Immediately following Governor Villeré's address to a joint session of the General Assembly November 21, the member from Plaquemines moved the appointment of a committee to draft a reply to the Governor. As it was customary to appoint the author of a motion as chairman of the particular committee, Livingston, along with Moreau-Lislet and Philemon Thomas, was charged with

[19] *Ibid.*, 14–15.

this duty. Upon moving to refer that part of the Governor's message relating to the amelioration of the criminal code to a select committee, he drew the chairmanship and the names of Grymes and Moreau-Lislet were added. To the same three were referred the questions pertaining to the judiciary; but, probably through oversight, the Speaker failed to include Livingston on the special committee on public health.[20] Of the six special committees created as a result of his motions the first day of the session, he was appointed chairman of three of the four to which he was assigned. His record for the day was unusual and he had no cause for complaint. From time to time he received additional assignments and on several occasions he was selected to represent the House in joint conferences with representatives from the Senate.[21]

On November 28 he requested the House to memorialize Congress to acquire a military road in Plaquemines Parish on each side of the river from Fort St. Philip to English Turn. The project was probably desirable and Livingston would have benefited materially from its construction, but his personal interest did not deter him from serving on a joint committee from the two houses to draft the memorial. He was no more successful in securing favorable action on this bill by Congress than he was in persuading the General Assembly to increase the salary of the sheriff of his parish.[22]

On December 26 he introduced a bill providing for the control of contagious diseases, and by his vote, February 7, 1821, the act authorizing the Governor to appoint a sanitary officer passed the House, sixteen to fifteen.[23] He prepared the act providing for a change in the time of making assessments on property and the payment of

[20] *Ibid.*, 7–8.
[21] *Ibid.*, 38, 39, *et seq.*
[22] *Ibid.*, 13, 17, 30.
[23] *Ibid.*, 39, 77–78.

taxes in New Orleans.[24] He sponsored the request for relief submitted by the masters of vessels in the port of New Orleans,[25] and was largely instrumental in securing favorable action on the bill.[26] The unwise and parsimonious plan to reduce the necessary governmental operating expenses from $20,000 to $10,000 annually failed to elicit his support. The vote on this amendment to the general appropriation bill was equally divided in the House, but the Speaker cast the deciding vote in the negative.[27] Livingston consistently voted in the affirmative on all bills concerning the improvement of the public school system, the judicial procedures in all the courts, and the betterment of undesirable conditions in the state.

In addition to the routine legislative procedure, Livingston devoted considerable time and effort to the problems relating to judicial and social reforms. Here he rendered his most effective service and made his greatest contributions. The practice of securing divorces by legislative action was repugnant to him, as he considered it a legal rather than a legislative function. His remedial acts prescribing the procedure to be followed in securing divorces and granting the district courts the right to dispose of such cases failed to be enacted into law.[28] He was also unsuccessful in his attempt to establish the practice of trial by jury in the Supreme Court [29] and provide for the right of appeal in criminal affairs.[30] These efforts, though unsuccessful, gave an index to his progressive and constructive statesmanship.

The disorders and crimes occurring in New Orleans following the close of the war occasioned the governmental authorities much concern. Villeré called the atten-

[24] *Ibid.*, 85, 89. [25] *Ibid.*, 42, 54. [26] Louisiana *Acts*, 1821, p. 116.
[27] Louisiana *House Journal* (French ed.), 1821, p. 78.
[28] *Ibid.*, 80, 90. [29] *Ibid.*, 79. [30] *Ibid.*, 52.

tion of the General Assembly to the existing conditions in his inaugural address, and recommended that attention be given the matter. In 1819 he informed the legislature that as a result of its wise action in creating the Criminal Court a decided improvement in the conditions had resulted, as the three judges had fearlessly discharged their duties. During the biennium 1819–1821, violations of the law decreased to the extent that it was possible to reduce the number of judges by one, but public attention had been directed to the problem of further eliminating crime by providing for the proper punishment and treatment of the lawbreakers.

In his inaugural address to the General Assembly, December 18, 1820, Governor Robertson devoted considerable time to the discussion of the crime problem. His clear, intelligent analysis of the question and his specific recommendations reveal an unusual grasp of the situation. The prevalence of crime among the youth was especially deplored, and the practice of placing young first offenders in the same prisons with hardened criminals was most severely criticized. He condemned reform schools as training institutions for crime and asserted that proper methods "had never been invented for the punishment of crime." Solitary confinement, chains, and even death had not solved the problem and the debtor prisoners in the "same quarters with murderers and robbers is repugnant to all sentiment of justice and humanity." The state of affairs was as blamable in principle, he maintained, as it was fatal in effect, and the power of the state should be applied to the solution of the problem. The legislature should, he urged, give careful consideration to this important problem and, at least, should make provisions for the erection of a penitentiary where the violators of the

law could be incarcerated in a suitable building under proper conditions.[31]

The striking similarity of the Governor's ideas upon this subject and those which Livingston had held for many years would indicate that the latter had inspired this part of the message. It was logical that the question of the erection of a penitentiary should have been referred to Livingston's committee,[32] and the act providing for its construction was undoubtedly written by him. The House approved the act, but it failed to become a law during the current session; however, in the second session Livingston was able to bring it to a successful conclusion.[33]

While Livingston was in sympathy with the plan providing for the erection of a penitentiary, it was his keen concern in the criminal procedures as a whole that influenced the General Assembly to provide for a revision of the entire Criminal Code.[34] Undoubtedly he drew the act of 1821 providing for the revision, in its entirety, as it is a clear expression of his mature thought and judgment and a definite statement of the thesis of his great work, the Penal Code. The whole scheme was his own; it was conceived deliberately; the entire proposed reform and the grounds for it were fully matured; and the whole was put in outline before it was given to the public. The act, which was approved by the Governor, February 10, 1821, recited: "That a person learned in law, shall be appointed by the Senate and the House of Representatives at this session, whose duty it shall be to prepare and present to the next General Assembly, for its consideration, a code of criminal law in both the French and English languages,

[31] *Ibid.*, 31–35.
[32] *Ibid.*, 85–86.
[33] *Ibid.*, 1822, p. 82.
[34] *Ibid.*, 1820, p. 42.

designating all criminal offenses punishable by law, defining the same, in clear and definite terms, designating the punishment to be inflicted on each, laying down the rules of evidence on trials, directing the whole mode of procedure, and pointing out the duties of the Judicial and Executive officers in the performance of their functions under it." [35]

A joint session of the House of Representatives and the Senate was held February 12 to select the individual to prepare a code of criminal law for the state. Of the forty-five votes cast, Livingston received thirty, Moreau-Lislet ten, and Abner L. Duncan five.[36] The day following, Livingston submitted a report regarding the establishment of a house of correction in which he enunciated his thesis on penal reform. The practice of housing first offenders with habitual criminals was severely criticized. He maintained that such practices would result in making confirmed lawbreakers of the youth of the state, as they would be taught the art of law violation by those associates who were adept in such practices. The indiscriminate use of the power of pardon was deplored inasmuch as it was used to liberate repeaters whereas it should be restricted to cases involving first offenders. Provision should be made for the segregation of the prisoners, with especial attention being given to the care of the youthful first offender.[37]

Livingston was as much interested in clarifying the civil law of the state as he was in penal reform. The Louisiana civil law was a maze of laws drawn from the Spanish and French with the addition of the English common law following the acquisition of the territory by the United States. The first serious effort toward codification of the

[35] Louisiana *Acts*, 1821, pp. 30–32.

[36] Louisiana *House Journal*, 1820 (French ed.), 84. [37] *Ibid.*, 86–87.

civil law was made by the General Assembly in 1819. On March 3 of that year the legislature authorized the translation of the *Partidas,* or Spanish law, into both the French and English languages. Moreau-Lislet and Henry Carleton who had already begun the work were the officially designated translators. The legislature further provided that their work was to be approved and certified by Livingston, Derbigny, and Etienne Mazureau, the attorney general of the state. The translators were to report to the General Assembly during the current session; consequently, Livingston, in addition to his legislative and legal duties, found it necessary to devote considerable time to this difficult task. Moreau-Lislet and Carleton, in making their report to the House during the last days of 1820, requested an extension of time. Livingston's committee in its report to the House, January 3, 1821, highly complimented the work of the translators. The definite statements concerning specific portions of the translation indicated clearly that the examiners had taken their assignment seriously and were pleased with the work as far as it was completed. Realizing the absolute necessity of the translation as a prerequisite to the preparation of the Civil Code, they recommended that an extension of time be granted and that the legislature appropriate to each translator an additional sum of $500, all of which was granted.

The constructive legislative session was a busy one for Livingston, but he enjoyed this period from November 20, 1820, to February 17, 1821. The time devoted to this work proved to be valuable to him and to the state. His interests were sufficiently broad to enable him to participate intelligently in the numerous discussions directed toward the solution of the varied and, in many instances, ordinary problems. The respect which he commanded in

the General Assembly was indicated when that body designated him to prepare a Penal Code which, in turn, brought to him an international reputation as a scholar, statesman, and jurist.

During the recess of the legislature, Livingston attended to his practice of law, his business affairs, and work upon the Code. When the General Assembly reconvened January 7, 1822, he was again in his seat, but was not so active on the floor of the House as he had been during the previous session. He failed to receive an appointment on any of the important standing committees, but was assigned as chairman of such significant ones as those on the judiciary and the penitentiary.[38] On January 10 he was selected to represent the House in a conference with designated members of the Senate to frame a protest to the general government as to "the alarming situation of our fortifications." [39] He was also designated one of the three representatives of the House to serve on a joint committee to investigate "the present judicial system" and report as to the changes deemed necessary.[40] His special assignments and the work on the Penal Code kept his time well occupied in a field of work that particularly interested him.

Several bills he had sponsored during the first session failed to receive legislative sanction, and to these he gave his personal attention and in most cases he was successful in having them enacted into law. Three of the most important of these questions dealt with the preservation of the trial by jury, the establishment of the mode of suing for divorce, and the designation of specific dates for the sessions of the Supreme Court and the District Court in New Orleans.[41] In addition, he introduced several bills

[38] *Ibid.*, 1822 (French ed.), 11, 13.
[39] *Ibid.*, 8, 11.
[40] *Ibid.*, 13.
[41] *Ibid.*, 26.

designed to effect certain necessary changes in the existing practices of the Supreme Court.[42]

Robertson in his message to the General Assembly, January 9, devoted considerable time to the questions of jurisprudence and the preparation of a code of laws to be published in "the two languages of the country." The legislature was requested to procure the means for the people of the state to become familiar with its laws. It was particularly complimented by the Governor upon its selection of Livingston to prepare a Criminal Code, for his hasty examination of the compilation had convinced him that it would prove useful to the public and add dignity to the jurisconsult whom they had put in charge of it. He also requested that additional courts be created and changes in court procedures be made in order to expedite justice.[43]

The chairman of the Committee on the Revision of the Civil Code, Moreau-Lislet, made a report to the House February 15. In reciting the difficulties which confronted the committee in their effort to revise the existing code, it was stated that the members were of the opinion that there was not sufficient time during the current session of the legislature to perform the task in a satisfactory manner. It was urged that a more thorough study of the *Partidas* and an investigation of the existing code with reference to the introduction of the common law of England should be made before the work was undertaken. A code would not be satisfactory unless due regard were given to the entire system; this would require careful consideration of the several parts of the civil law; harmonizing and unifying all details; including all amendments and corrections; and compiling a digest of all laws relative to commercial transactions, judicial actions, and practices

[42] *Ibid.*, 36. [43] *Ibid.*, 7–8.

in the civil courts. This research, evaluation, and compilation should be undertaken by lawyers well versed in the civil law, and upon the completion of the task their work should be given legislative sanction. Action should be deferred until it was decided to comply with these provisions, for otherwise it would result in a revision of the code in its present state which would be entirely useless.[44]

Moreau-Lislet, Charles Bushnell, and Livingston had submitted an excellent report and it was favorably received by the House. A resolution, introduced by Grymes and later amended, incorporating the recommendations of the special committee was passed by the House and the Senate. Three jurisconsults were to be selected by a joint vote of the Senate and the House to revise the Civil Code, the Code of Procedure, and to prepare a Commercial Code. After the approval of the concurrent resolution by the Governor,[45] a joint meeting of the two houses was held at two o'clock March 14 to elect the three jurisconsults. Of the forty-eight members present and voting, Moreau-Lislet received forty-three votes, Livingston twenty-five, Derbigny twenty-five, Workman twenty-three, Mazureau twenty-one, J. Smith three, P. L. Morel two, and Henry Carleton one. Moreau-Lislet, Livingston, and Derbigny were declared duly elected.[46]

On March 1, 1822, Livingston reported for the committee that had been "appointed to examine the several plans for a penitentiary transmitted by the Governor to the General Assembly." After having carefully examined and compared the several plans and considered all the

[44] *Ibid.*, 45. [45] *Ibid.*, 74.

[46] *Ibid.*, 75. An act of the legislature provided that "an adequate sum of money shall be allowed to each of the said jurisconsults . . . and that one thousand dollars be immediately paid to each of them on account thereof in advance." Louisiana *Acts*, 1822, p. 108; New Orleans *Louisiana Courier*, March 18, 1822.

circumstances, the committee recommended the selection of the South Carolina plan as uniting all of the advantages specified in the resolutions of the General Assembly. The estimated cost of duplicating such a plant was $300,000, but by reducing the plan to provide for the confinement of only two hundred convicts and for their employment at hard labor in solitude, the cost would be reduced in the amount of $100,000. "If an ill-judged economy prevents the erection of such buildings as are necessary for the classification and proper employment of the convicts," the system would be as in other states, inefficient. While due regard had been given to economy in the selection of a plan, the committee had not rejected the best one available "on account of some additional expense." Since the utility of the penitentiary system and "perhaps the very existence of that mode of punishment, depends on the liberal and wise plan on which the buildings are to be erected," the committee prepared and submitted a bill for the erection of a prison incorporating the above provisions.[47] The act providing for the erection of a penitentiary passed both Houses and the Governor was authorized to proceed with its construction.[48]

During the latter part of the session, Livingston submitted a report to the legislature upon the progress made in the preparation of the Criminal Code.[49] The General Assembly instructed him to proceed with its completion; [50] however, the task was not finished until some

[47] Louisiana *House Journal*, 1822 (French ed.), 62.

[48] *Ibid.*, 82.

[49] *Ibid.*, 74.

[50] *Ibid.*, 76–77. After approving Livingston's report, the resolution continued: "and earnestly solicit Mr. Livingston to prosecute this work, according to said report, that two thousand copies of the same together with the part of the projected code hereto annexed be printed in pamphlet form, one thousand of which shall be printed in French and one thousand in English under the direction of the said Edward Livingston, Esqre." Louisiana *Acts*, 1822, p. 108.

years later when he was no longer a member of the House of Representatives.

Livingston's career in the legislature was not unusual; he was one of the more important members of the House, but made no greater contributions than did Moreau-Lislet, Grymes, and several others. The greater part of his time and efforts were devoted to routine matters, and his activities did not stamp him as the outstanding personality of the General Assembly. When his two-year term as Representative from the Parish of Plaquemines expired in 1822, he decided not to stand for re-election. Instead, he again sought a seat in the House of Representatives in Congress and this time he was successful. The returns from his services as a state legislator were profitable: he had been honored with public office in his adopted state; and he had received appointments on special commissions that would bring to him an international recognition of his scholarly attainments. It was the thorough and efficient manner in which he executed the legislative mandate regarding Codal reforms that caused Livingston to be ranked with the world-wide outstanding philosophers, social reformers, and legal geniuses of his age.

Chapter XI

THE CODIFIER

THE Roman law was the basis of both the French and Spanish Louisiana colonial law. In the early days Louisiana, primarily a military settlement, was governed by the Custom of Paris and with the passing of the territory into the control of John Law's Mississippi Company in 1717, France made this system of laws applicable to the province. In 1763 France ceded Louisiana to Spain, and Governor Don Alexandro O'Reilly, in 1769, abolished the French laws in the colony, extended to it the laws of the Indies, and at the same time issued a formulary of Spanish law. The old French laws continued to exert a strong influence among the French Creoles as late as 1803 when the United States acquired possession of the province.[1] At this time the Spanish law was comprised of eleven codes in twenty-three volumes containing 20,335 laws, among which was the *Partidas* that was in force with the exception of certain criminal laws and acts pertaining to the Catholic religion. This multiplicity of laws was further complicated by the contradictions in their provisions, and by the uncertain

[1] Henry P. Dart, "Courts and Law in Colonial Louisiana," in the *Report of the Louisiana Bar Association* (New Orleans), XXII (1921), *passim;* John H. Tucker, Jr., "Source Books of Louisiana Law," in *Tulane Law Review* (New Orleans), VIII (1934), 396–405.

authority of opposing enactments in cases of conflict.[2] The congressional statute providing for the occupation of the territory by the United States left the fundamental law of the land unchanged by declaring that the civil, military, and judicial powers exercised under the existing system were to be distributed according to the wishes of the President.[3]

The American immigrants attempted to change the existing laws of Louisiana by introducing *in toto* the English common law practices found in all the other courts of the United States. The clamor was such that Congress in the act of 1804, creating the territories of Orleans and Louisiana, provided that the civil law should prevail but made no changes as it recited that the laws in force in the territory "shall continue in force until altered, modified or repealed by the governor and judges." Practically the same provision is found in the congressional act of 1805 relating to the organization of the territory of Orleans.[4] The territorial legislature in 1805 provided for the appointment of a committee to reduce the maze of laws in Orleans territory into a single practical system. Moreau-Lislet and James Brown were the two persons selected for the work.[5] They followed the last projet of Jean-Jacque de Cambacérès in many particulars yet they incorporated a part of the Spanish law that had become a rule of property in Louisiana in their *Digest of the Civil Laws now in force*

[2] William H. Byrnes, Jr., John H. Tucker, Jr., and Gaston L. Porterie (eds.), *A Republication of the Projet of the Civil Code of Louisiana of 1825*, in *Louisiana Legal Archives* (New Orleans, 1937), I, vi.

[3] Martin, *General Digest of the Acts of the Legislatures*, 136.

[4] *Ibid.*, 162, 172.

[5] Territory of Orleans *Acts*, 1804, pp. 416–54; Louis Moreau-Lislet and Henry Carleton (trans.), *The Laws of Las Siete Partidas, Which are Still in Force in the State of Louisiana* (New Orleans, 1820), I, xxii.

in the Territory of Orleans, with Alterations and Amendments Adapted to its Present System of Government. Official sanction was given the Code March 31, 1808. This work failed to remedy the conditions, however, as all French and Spanish laws were not repealed, but only those acts that conflicted with the Code.

Neither were conditions remedied by the congressional enabling act of 1811 or the act for the admission of Louisiana as a state in 1812. The framers of the first state constitution made no attempt to clarify conditions, as that instrument, in Article IV, Section 11, recited that "all laws now in force in this territory, not inconsistent with this constitution, shall continue and remain in full effect until repealed by the legislature." Subsequently, the Supreme Court of the state interpreted the Civil Code of 1808 to the effect that the Spanish laws were still in force in Louisiana.[6] Probably it was this action of the Court that stimulated the state legislature in 1819 to consider seriously the question of providing a remedy for the existing evil "of being obliged in many cases to seek our Laws in an indigested [*sic*] mass of ancient edicts and Statutes, decisions imperfectly recorded, and the contradictory opinions of Jurists; the whole rendered more obscure by the heavy attempts of commentators to explain them." [7] Additional time was granted Moreau-Lislet and Henry Carleton to complete

[6] Cottin *v.* Cottin, 5 Mart. (O.S.), 93 (1817), cited by Tucker, "Source Books of Louisiana Law," in *Tulane Law Review*, VI (1932), 284.

[7] Edward Livingston, Louis Moreau-Lislet, and Pierre Derbigny (comps.), *To the Honorable the Senate and House of Representatives of the State of Louisiana, in General Assembly Convened. The Subscribers, Jurists, appointed for the Revision of the Civil Code, Respectfully report* (New Orleans, 1823), 3. Subsequently cited, *Report on the Revision of the Civil Code.* An original copy of this report is in the Louisiana State University Library. A photostatic copy is available in the Library of Congress.

the translation of the *Partidas*. During the same session the General Assembly provided that this work was to receive official sanction if the accuracy of the translation satisfied its examiners, Livingston, Derbigny, and Mazureau. It also provided for the payment of $3,500 to each translator.[8]

The legislature took the first step toward remedying the intolerable situation resulting from the numerous conflicting statutes and judicial decisions following the completion of the *Partidas* translation. Three jurisconsults were selected March 14, 1822, and instructed to proceed with the revision of the Civil Code, the preparation of a Commercial Code, and the formulation of a "treatise on the rules of civil actions and a system of practice to be observed before the courts." The Code commissioners were eminently qualified for their tasks, and each supplemented the work of the others. Derbigny's knowledge of the Spanish laws gained by his work on the translation of the *Partidas;* Moreau-Lislet's experience in the work on the Code of 1808; Livingston's understanding of the Roman, French, Spanish, and English systems of jurisprudence and his preparation of a simplified code of civil practice and procedure, which received legislative sanction April 10, 1805 [9]—all made possible an early beginning and a satisfactory prosecution of the work.

The three commissioners made a preliminary report on the progress of the work to the General Assembly,

[8] Louisiana *Acts*, 1819, pp. 44–46.

[9] Territory of Orleans *Acts*, 1805, pp. 144–88, 210–60. New Orleans *Louisiana Courier*, October 16, 1807, carried an advertisement announcing the publication of a Code of Civil Laws by Edward Livingston that included the "Code of Ancient Jurisprudence . . . the opinions and Institutes of the Caesars . . . [and] a digest of the Pandects and Edicts of Justinian."

February 13, 1823, in which they recognized the serious import of their duties, revealed the fundamental system of laws that would guide them in the preparation of Codes, and in a general statement indicated a tentative division of work. The adoption of the *Digest of the Civil Laws* of 1808, the report pointed out, had been an advance toward the clarification of the law, and the "establishment of system and order in the several points of jurisprudence." It was an advance because it removed the necessity of referring to the Roman and Spanish authorities on these subjects, and "because it demonstrated the practicability of a more extensive reform." The *Digest,* however, was imperfect, as it was not exhaustive and therefore necessitated a reference to "all those cases (and they were many) which it did not embrace." [10] "In the Napoleon Code, that rich Legacy which the expiring Republic gave to France and to the world," the report continued, "we have a system approaching nearer to perfection than any which preceded it." That Code was to supersede all the other laws of France and "be for future cases, the only rule of conduct." The law putting it into effect declared that from the time it went into operation, the "Roman Laws, the Ordinances, the general and local Customs, the Statutes and regulations shall cease to have any force" in those matters which "form the object of the Code." [11]

The committee, the report stated, would draw from the *Partidas,* the *Digest* of the Louisiana laws, the existing English law, the codes of France, and the Roman codes. No change would be made unless there was some inconvenience in the application of the existing law and no new provision would be introduced until it had

[10] *Report on the Revision of the Civil Code,* 3–4. [11] *Ibid.,* 5–6.

been examined carefully and every consequence considered. In all cases, if possible, the committee would borrow laws from some code "of which the operation" was known, rather than from their "own resources." When written laws were to be used they would be framed in accordance with the spirit of the legislation on which "they are to be engrafted." [12] The committee recognized its duty to "comprise in the several codes" all rules which in its opinion were deemed "necessary for stating and defining" those rights which directly affected all the personal, social duties and relations of men. It planned to give "force and effect" to the various methods employed by which property was acquired, preserved, and transmitted. It would define those rules which related to the right of individuals in cases of civil redress of injury and would give attention to those principles that had "received the sanction of time" and the preceding legislators.

The committee further declared that in the exercise of discretionary power the judge would be confined to the application of facts in cases of construction only. He should give voice, utterance, and effect to legislative decree, but in case of no law he could "neither pronounce, nor expound, nor apply it." In civil cases where no precedent existed he should establish a rule, but his decision unless based upon the Code should not possess the force of precedent unless it was later sanctioned by legislative will. In order to relieve the courts of the necessity of referring to all existing rules before deciding the law and giving an opinion doubting its legality as shown later by some obscure decision, the repeal of "all former Laws and usages defining civil rights and indicating the means of preserving and as-

[12] *Ibid.*, 6, 7–8.

serting them" was recommended. In concluding the report of the committee, signed by Livingston, Moreau-Lislet, and Derbigny in the order listed, the commissioners asserted that in their work they were actuated by the desire to furnish the citizens with a single, practical code book, "in which each may find an intelligible and concise rule to ascertain his rights, direct him in his duties, regulate his contracts, explain his civil relations and guide him in his applications for justice." They further asserted that "the other work [the Penal Code], to which we have alluded, unconnected with this, will complete the system, and shew him [each citizen] what acts are offences, and what penalty is attached to their commission." [13]

The completed reports of the jurisconsults were printed and distributed to the legislators sometime later in the year 1823. The draft of the proposed changes in the Civil Code was entitled *Additions and Amendments to the Civil Code of the State of Louisiana, Proposed in Obedience to the Resolution of the Legislature, of the 14th of March, 1822* [14] commonly referred to as the Projet of the Civil Code of 1825. This projet indicated all the changes in the additions to and omissions from the Civil Code of 1808, yet it did more than list additions and deletions. It frequently explained and gave the reason for the proposals; moreover, specific authority was cited for the articles selected and for the proposed changes. These citations are detailed and precise and are of incalculable value in determining the

[13] *Ibid.*, 10, 12–13; St. Francisville *Asylum and Feliciana Advertiser*, February 20, 1823.

[14] *Additions and Amendments to the Civil Code of the State of Louisiana, Proposed in Obedience to the Resolution of the Legislature, of the 14th of March, 1822, by the Jurists Commissioned for That Purpose* (New Orleans, 1823).

application of the Codal articles to which they refer.

Approximately 80 per cent of the provisions of the Civil Code were taken verbatim from the *Code Napoléon* and practically all of the remaining 20 per cent were drawn from the commentaries of the earlier French jurists, Jean Domat, Joseph Robert Pothier, and Charles B. Toullier.[15] The Civil Code adhered to the *Code Napoléon* in spirit and in arrangement, and the completed work consisted of a preliminary title and three books, each containing a list of terms clearly defined. The several books were divided into titles which were subdivided into chapters, and the chapters into articles. The 3,522 articles of the completed work were numbered consecutively, without regard to books or chapters. The preliminary title dealt with Laws and Their Interpretation; the three books dealt with Law of Persons, Law of Things and the Different Modifications of Ownership, and Different Modes of Acquiring Ownership of Things.

The relative importance with which the Code commissioners held the question of Different Modes of Acquiring Ownership of Things was indicated by the space allotted to the problem in the completed work. More than two thirds of the finished Civil Code, comprising the 2,656 articles of Book III, was devoted to the treatment of this subject. The thesis of this book is set forth in Article 866 which recites that the ownership of things or property "is acquired by inheritance either legal or testamentary, by effect of obligations,

[15] William K. Dart, "The Louisiana Judicial System," in *Louisiana Digest Annotated* (Indianapolis, 1917), I, 21; Henry P. Dart, "The Sources of the Civil Code of Louisiana," in *Report of the Louisiana Bar Association*, XIII (1911), *passim;* Charles E. Fenner, *The Genesis and Descent of the System of Civil Law Prevailing in Louisiana* (New Orleans, 1887), *passim.*

and by the operation of law." The commissioners gave emphasis to and treated in great detail the questions pertaining to these three main methods of acquiring ownership. It was in connection with the creation of the Law of Obligations that Livingston made his greatest contribution to the Civil Code. He was the only member of the commission trained in the field of common law; therefore the introduction of "a very large part" of the common law on obligations as well as the effective manner of "harmonizing it with the Civil Law in a remarkable way" has logically been ascribed to him.

The work of the jurisconsults was approved by the legislature on April 12, 1824,[16] and on May 20, 1825, the *Civil Code of the State of Louisiana* was officially promulgated and became operative one month subsequent thereto. "Louisiana thus enjoys the honor," said the Washington *Daily National Intelligencer,* "of having made the first effective movement in the world of legal reform and was fortunate in possessing a citizen [Livingston] so well qualified to fulfill the important design which the legislature of the state had the wisdom to adopt and persevere in." [17] "Created on broad philosophical lines," according to William K. Dart, ". . . It covers every conceivable phase of civil law, and contains within its covers a remedy for every wrong. The tinkering of a century has only dented a few of its edges, and it stands today as it stood over a century ago, a magnificent monument to human industry and learning." [18]

In executing the legislative mandate to "revise the code," Livingston, Moreau-Lislet, and Derbigny had

[16] Louisiana *Acts,* 1824, pp. 172–79.
[17] Washington *Daily National Intelligencer,* June 22, 1825.
[18] Dart, "The Louisiana Judicial System," in *loc. cit.,* 36.

built well. They gave Louisiana a structure that not only met her existing needs but one so designed that with few alterations it has continued to meet her changing requirements. The Code of 1870, drafted nearly a half century later, resulted from "various progressive legislative amendments to many articles," [19] and especially from the changes wrought by the Civil War, the adoption of a new state constitution in 1868, and the necessity of making a complete revision of the statutory law. The General Assembly, in 1868, ordered a revision of the statutes and the Civil Code, and John Ray was selected for the important task. Following the printing of his revision of the Civil Code the following year, the projet was adopted by the legislature in 1870 and officially designated *The Revised Civil Code of the State of Louisiana.* Ray's revision merely placed all amendments in their proper places in the Code and eliminated all Codal articles relating to slavery. Since 1870 "there has been no revision of the Code, although the legislature has amended a number of its articles to meet modern conditions of life." [20] Almost in its original form the Civil Code has survived more than a century and certainly "no man could wish for a greater memoriam."

The Code commissioners had no model to guide them in executing the legislative command to prepare "a treatise on the rules of civil actions and a system of practice to be observed before our courts." The laws on practice and procedure employed in Louisiana at the time of its transfer to the United States had been drawn from the Custom of Paris, the *Code Louis* of 1677, and

[19] *Ibid.;* John H. Tucker, "Source Books of Louisiana Law," in *Tulane Law Review,* VI (1932), 294.

[20] Dart, "The Louisiana Judicial System," in *loc. cit.,* 21.

the series of regulations for judicial procedure promulgated by Governor O'Reilly in 1769. With the transfer it became necessary for the United States to establish governmental agencies in Louisiana consistent with the territorial status; and, in 1804, Congress provided that the judicial power should be exercised by the Superior Court and the inferior courts which the legislative council was empowered to create. The change in governmental structure and the great influx of attorneys from the common law states made it imperative that legal sanction be given to specific rules of practice. It was to meet this need that the Council on April 10, 1805, adopted the two acts which regulated the practice of the Superior Court and the inferior courts in civil cases.

Livingston drafted the acts of 1805 regulating civil procedure and believed he had attained his objective of reducing the rules of practice to their simplest terms. Later, when a young lawyer from a common law state recently arrived in New Orleans sought assistance in mastering the rules of practice, Livingston informed him that the intricacies of the system could be mastered in one evening. After a quarter of a century he referred to this Code of 1805 in a letter to Jeremy Bentham and claimed that the Louisiana book of reports from 1808 to 1823 contained "fewer cases depending upon disputed points of practice than occurred in a single year, 1803, in New York" where common law procedure prevailed.[21] The practice act of 1805, enlarged with additions from the common law and the old Spanish procedure, remained the basis of the civil procedure until the Code of Practice became effective in 1825. The use of common law terms in the acts regulating procedure resulted in disorder and accentuated the strife between

[21] Hunt, *Life of Edward Livingston*, 118 n.

that system and the civil law. The revival of the Spanish law by the Supreme Court in the case of Cottin *v.* Cottin had made for confusion in the substantive law of the state which was reflected in its adjective law. It was natural, therefore, when the legislature decided to revise the Civil Code of 1808 that it should order a revision and codification of the rules of practice which culminated in the *Code of Practice in Civil Cases for the State of Louisiana.*

The three jurisconsults drew from the Roman, French, and Spanish civil law elements as well as from the common law elements of English origin in the preparation of the Code of Practice. Frequent citations were made to the great Roman works—the *Institutes,* the *Digest,* and the *Justinian Code;* to the Spanish sources—the *Partidas,* the *Recopilacion,* the *Curia Filipicia,* the *Fuero Juzgo,* and to the works of Miquel Febrero; and to the French authorities—the *Code Napoléon,* and the contributions of Domat and Pothier, the last particularly for his treatise on procedure based largely on the *Code Louis.*[22] In addition to the numerous citations to the practice act of 1805, use was made of the early acts of the state legislature, and the early decisions of the Supreme Court were also relied upon. While it is difficult to estimate the influence that common law had upon the finished product, the practice act of 1805 had provided that the Superior Court should be conducted "according to the rules and regulations prescribed by the common law." The Supreme Court, however, early had held that the "common law terms ought to be considered rather as a translation of names formerly used than as emanating from English juris-

[22] Tucker, "Source Books of Louisiana Law," in *Tulane Law Review,* VII (1933), 82–86.

prudence." [23] This followed the early contention of Livingston that the common law was to be interpreted as the law of the land rather than specifically the English or the American common law. Later, the Court recognized the common law derivation of a great part of the Code and turned to common law books for guidance where the Code of Practice was silent. Nevertheless, the Code of Practice "is more directly Roman in its origin," probably, than is the Civil Code; and, as it emanated from these different systems, it may be said to be the most individual of all Louisiana legal institutions.[24]

In structure, the projet of the Code of Practice conformed generally to the adopted projet of the Civil Code. Book One, containing 123 articles, treats of Civil Actions; and Book Two, containing 1,038 articles, embodies the Rules to be Observed in the Prosecution of Civil Actions. The books are divided into titles which are subdivided into chapters of consecutively numbered articles without reference to the other subdivisions. It, like the Civil Code, was originally written in French and the French text prevails where there is a conflict with the English translation. Pursuant to legislative enactment it was printed, promulgated, and distributed to the courts, and became effective throughout the state in October, 1825.

The question of determining the individual contributions to the completed Code of Practice is conjectural because the Code commissioners gave no indication of the specific assignments on the projet in any of their printed reports. The tentative division of work as outlined in their report of the *Revision of the Civil Code* indicated that two members of the committee were

[23] Quoted in *ibid.*, 86.

[24] *Ibid.*, 86–87.

engaged in work on the Civil Code, one of whom was formulating amendments to the first book; a second was preparing the titles for the third book as well as a sketch of the Code of Procedure; and the third jurist was at work on the projet of the Commercial Code.[25] In line with this report an allotment of work to each commissioner on the basis of interest would of necessity assign the first task to Moreau-Lislet, the second to Livingston, leaving Derbigny the job of preparing the projet of the Commercial Code. Authorship of the Commercial Code, however, has been commonly ascribed to Livingston,[26] consequently, no definite statements can be made concerning the specific assignment of each of the three redactors. An estimate, nevertheless, can be made of their respective contributions if training, proficiency, and achievement in the several fields of jurisprudence serve as the guide.

The manner and degree with which the common and civil law procedure were merged in the Code of Practice reveal the touch of a jurist or jurists familiar with both systems. Such a fusion as resulted from the blending of the Law of Obligations, attributed to Livingston, with the method of civil law procedure constitutes an important part of the Code. Only an individual or individuals who had mastered the intricacies of the common law pleading could have harmonized the Law of Obligations with the civil law procedure. The major portion of the Code consists of rules which were formulated by one adept in the field of adjective law. The practice act of 1805, frequently cited, was drawn by a

[25] *Report on the Revision of the Civil Code*, 12.

[26] [Edward Livingston], *Commercial Code for the State of Louisiana* (New Orleans, 1825). A copy of the English text is available in the Library of Congress.

member of the Code committee. Livingston was the only jurisconsult trained in both the common and civil law; he was a specialist in the field of adjective law; and he was the author of the practice act of 1805. Therefore, the assumption that Livingston at least made substantial contributions to the Code of Practice is a natural inference; and the deduction that he was the member selected to prepare a "sketch of the Code of Procedure," referred to by the Code commissioners in their first report, is a logical conclusion.

Irrespective of authorship the Code of Practice of 1825 is a distinct tribute to the Code commissioners. It not only met legislative requirements but it still serves as an outline of the method of civil procedure in Louisiana. It takes precedence over the Civil Code and the Revised Statutes in case of conflict. The simplicity with which parties are able to bring their rights before the courts and the absence of technicalities that tend to obstruct the progress of justice are among its valuable features. Whether by design or by accident there exists a close resemblance between the last equity rules adopted by the United States Supreme Court and the Louisiana Code of Practice.[27]

The same reasons that occasioned the legislature in 1868 to make provisions for a revision of the statutes and the Civil Code resulted in a similar action in regard to the revision of the Code of Practice, a task also assigned to Ray. His contributions in the field of procedure were restricted mainly to the elimination of the articles pertaining to slavery and to the incorporation in the revised text of those amendments enacted by the legislature subsequent to 1828. With the approval of Act 98 of the 1870 General Assembly on March 14,

[27] Dart, "The Louisiana Judicial System," in *loc. cit.*, 37.

The Code of Practice of the State of Louisiana became operative. Following Ray's work of harmonizing the Code with the jurisprudence there has been no general revision of the Code of Practice. Its provisions, however, have been materially changed by numerous comprehensive legislative acts. Nevertheless, the Code of Practice is today as important to the lawyer in Louisiana as is the Civil Code.[28]

In the decade following the close of the War of 1812, Louisiana experienced a substantial growth in population and its capital became an important business and commercial center. Certain large mercantile houses of the Atlantic seaboard cities located branches in the city and there were also numerous small merchants who came to live in New Orleans and engage in trade. With Louisiana's diversified interests and New Orleans' rapidly expanding commerce, business practices grew increasingly complicated. The practice act of 1805 and the *Digest of the Civil Laws* of 1808 had ceased to meet the varied demands of the increasing business interests. The general confusion and disorder resulting from the chaotic condition of the jurisprudence of the state was reflected in the economic life of the citizens. As a result of this intolerable situation there was an insistent demand for legislative action to clarify the existing laws and give official sanction to a system of business procedure that would insure uniform practices among those engaged in the various commercial fields. It was in response to this general demand that the legislature on March 14, 1822, authorized and instructed the three jurisconsults "to add to their work a complete system

[28] *Ibid.;* Tucker, "Source Books of Louisiana Law," in *Tulane Law Review,* VII (1933), 92.

of commercial laws in force in this state with the alterations they will deem proper to make thereto."

Irrespective of authorship, the completed Commercial Code clearly indicates that a careful and painstaking effort was made to comply with legislative instructions. The materials to be utilized were collected, classified, altered where necessary, and finally formulated as articles. In accordance with this plan of procedure, those decrees, ordinances, and statutes that were acceptable to the commercial interests and would serve as the basis of a uniform course of procedure were selected from the numerous conflicting French, Spanish, and American laws. This material, classified under two heads, Commerce in General and Maritime Commerce, was altered to conform to the general outline, and incorporated in the 1,987 articles of the completed work. Hardly a point relating to commerce can be raised in this 252-page *Commercial Code for the State of Louisiana* that was not covered either in one of the five main divisions of Book One, Commerce in General, or under one of the seven titles of Book Two, Maritime Commerce.[29]

The Commercial Code, as submitted to the legislature in 1825, dealt with contemporary questions relating to the activities of individuals engaged in the various commercial pursuits. Not only are such terms as Merchants in General, Partnerships, Commercial Agents, Brokers, Ship Owners, Captains, and Crews of Ships defined, but their rights, obligations, responsibilities, and liabilities under various conditions are fully set forth. The field relating to banking, with the bills of exchange and the various kinds of insurance, was ex-

[29] [Livingston], *Commercial Code for the State of Louisiana, passim.*

haustively treated. The proficiency in the field of adjective law as revealed in the Commercial Code was probably responsible for the ascribing of the authorship to Livingston. The problem was handled in great detail; the materials were arranged in logical sequence; the rules and definitions were framed in clear, concise language; and all contradictory laws were eliminated. Apparently, the demands of the commercial interests and requirements of the legislature had been met; nevertheless, the Code failed to receive official sanction. This lack of positive action by the General Assembly probably can be attributed to the adoption of the Civil Code which had clarified many of the controversial points of law and which had incorporated within its provisions many of the points at issue affecting the commercial interests.

Although Livingston devoted considerable time to the preparation of the Civil Code, the Code of Practice, and evidently to the Commercial Code, he did not neglect his work on the Penal Code. As early as March 13, 1822, the same date that the legislature selected the committee to revise the Civil Code, he submitted to the General Assembly a preliminary report relative to the progress of his work on the Penal Code.[30] The detailed report covering the entire plan was approved, the author was instructed to proceed with its completion, and the legislature voted him $1,000 on account.[31] Consequently, during the next three years Livingston worked concurrently upon the codes in addition to attending to his legal practice and serving in the national

[30] Edward Livingston, *Report Made to the General Assembly of the State of Louisiana, on the Plan of a Penal Code for the said State* (New Orleans, 1822).

[31] Louisiana *Acts*, 1822, p. 108.

legislature. In 1824, during the recess of Congress, Livingston and his family resided at 60 Broadway, New York, where the Penal Code was finished. On the night of its completion, November 14, the entire work, with the exception of some notes and a few pages at the printer's, was destroyed by fire in his library.[32] The next morning he was busy on the projet again and as the work progressed he found that much of what he had done was easily recalled. Within two years the Penal Code was ready for submission to the legislature.

Livingston's approach to and solution of the penal problem had been clearly indicated in his official acts and communications. His letter to the President of the Mechanics Society of New York in 1803, his work in 1820 on the special legislative committee relative to providing a penitentiary for Louisiana, and the concise and exact phraseology of the act authorizing the preparation of a Code of Penal Reform state succinctly his philosophy upon the subject. Livingston's object was to ameliorate punishment and not to avenge society; to reform the criminal and to prevent crime; and to clarify existing laws and write them in language comprehensible to all the people.

For an appreciation of the importance of Livingston's projet, it is necessary that some attention be given to the sources, the history, and the condition of the criminal laws as they existed in 1821. The whole Spanish system of laws and political institutions that O'Reilly had promulgated for the province of Louisiana in 1769 continued in force until 1803, when the United States acquired the territory. The new government did not

[32] New York *Mercantile Advertiser,* November 16, 1824; New Orleans *Louisiana Courier,* January 17, 1825; New Orleans *Argus,* December 2, 1824.

repeal the laws of Spain in the territory, and Congress, in 1804, provided for the continuance of all the presently operative territorial laws until the legislature should alter, modify, or repeal them, except such laws as were inconsistent with the right of trial by jury, the writ of habeas corpus, and the privileges against "cruel and unusual punishments." These express provisions of the territorial laws remaining in force were reaffirmed by the congressional act of March 2, 1805.

On May 4, 1805, the territorial legislature specified a limited number of ordinary crimes and misdemeanors. It declared that the offenses enumerated were to be construed and tried according to the common law of England, but offenses other than those listed remained subject to the definition and mode of punishment prescribed by the Spanish laws which were strictly a part of the territory.[33] On June 3 of the following year the first territorial legislature not only recognized the Spanish laws, but also invested the territorial Superior Court with the power to punish crimes that were committed under the Spanish and French governments within the two years "previous to the delivery of Louisiana to the government of the United States." [34] The constitution of 1812 made no effort to clarify the situation [35] and, in 1814, Governor Claiborne complained to the legislature of the confusion that existed in the penal jurisprudence.[36] Livingston described it as consisting of so many acts amendatory and supplementary to former laws that references "from one statute to another were as difficult

[33] *Complete Works of Edward Livingston on Criminal Jurisprudence* (New York, 1873), I, 98–101.

[34] Territory of Orleans *Acts*, 1806, pp. 66–68.

[35] Thorpe (comp.), *Federal and State Constitutions*, III, Art. IV, Sec. 11, p. 1387.

[36] Louisiana *Senate Journal*, 1814, pp. 6–7.

to trace as the most involved table of descents." [37] Neither the 1814 state legislature nor succeeding assemblies gave consideration to the Governor's recommendations, and, as late as 1821, none of the Spanish penal regulations had been abrogated.[38]

While many of the old Spanish laws might be obsolete in Louisiana, they remained an objectionable part of the statutes of the state. Among these unrepealed ordinances was that dealing with infamy in Book Seven of the *Partidas* called *Enfamamiento* and that known as *falsedades* or *crimen falsi*. In the latter, among other provisions it was made a criminal offense, punishable with "banishment and confiscation of all property," for a lawyer to betray the secrets of his client or purposely cite the law falsely. The same punishment was provided for those changing their names for more honorable ones and for women feigning maternity and producing counterfeit heirs. By the same Code, not only were adulterers, seducers, and their agents punishable with stripes and confinement, banishment, confiscation of property, or death, but their offenses were subjected to severe definitions and harsh rules of evidence. Even vestiges of the system remained which inflicted bloody penalties upon the crimes of Judaism, heresy, and blasphemy, and which regulated torture of the pillory, public flogging, and burning to death.[39]

The Spanish system of laws, Livingston concluded, did not furnish all of the penal jurisprudence that needed to be eliminated. There was much in the common law of England relating to definition, evidence, and procedure, as well as certain provisions incorporated in the

[37] *Complete Works of Edward Livingston on Criminal Jurisprudence*, I, 183.

[38] *Ibid.*, 144.

[39] *Ibid.*, 102–15.

territorial act of 1805, that should be omitted. There existed a definite need for clearness and certainty in place of vagueness and mystery and for a written law that would, as far as possible, supersede precedent, custom, and tradition.

It was Livingston's conviction that punishment should be proportionate to the offense, and that rules of evidence, as applicable to each offense, should be ascertained. Not only should the rules of procedure be simple, he contended, but the law should declare explicitly the duty of the executive and magisterial officers. It was the desire to remedy these conditions that prompted Livingston to accept the legislative commission to prepare a penal code of uniform and consistent laws. In his labors he was guided by two paramount considerations: [40] to define clearly and fully the rights of individuals in their personal relations to each other; and to substitute remedial legislation for vindictive laws.

"Under the direction of a religious desire to perform the high duty entrusted" to him, Livingston brought to the task his "best faculties." "Not a provision," he asserted, had been "made, without the deepest reflection upon the consequences." "Not a line" had been written "that was not sent to every quarter of the union in search of amendment." Every suggestion that "brought conviction" to his mind had been "adopted, without pride of opinion." He submitted "to the test of long reflection and severe scrutiny, every principle" that he had "laid down, and every provision intended to give it effect." He was guided by his leading rules "to adopt no theory, by whatever specious argument supported, until" he "should be convinced of its practical utility; diligently to seek for information, but to admit nothing upon the mere au-

[40] *Ibid.*, 84–87.

thority of high names; to make no unnecessary innovation, but boldly to propose every change" he considered "practicable and useful." [41]

Livingston not only secured information on the subject from correspondence, from personal investigation, and from books, but he drew heavily on the laws of the *Partidas* and other statutes of Spain, the Code of France, and the English common law for his Penal Code. The influence of Cesare B. di Beccaria, Denis Diderot, Charles de Montesquieu, François M. de Voltaire, Jeremy Bentham, and other social reformers of Europe as well as of America was reflected in his plan. The simplicity of language, the enlightened spirit of philanthropy, and the single aim to benefit his fellow man reveal that Livingston was far in advance of his time and that he was desirous that Louisiana should lead the age in humanitarian legislation.[42]

Originally, Livingston contemplated the inclusion of the whole system in a single code in which the principal divisions were to be dealt with in separate books or chapters. Before he reported to the legislature, the inherent weakness of this plan became apparent, and he therefore adopted the plan of preparing separate codes. This scheme was more flexible in that it made for an easier mode of reference as well as for order and directness in the distribution of the subdivisions.[43] In the two elaborate preliminary reports to the General Assembly, Livingston discussed his plan of a penal code and his system of penal law. He also reviewed the existing conditions, recounted the difficulties being encountered in the preparation, and submitted for approval the plan of his proposed system from which he made but few departures in execution. The completed work, called *A System of*

[41] *Ibid.*, 79–81. [42] *Ibid.*, 48–49, 31, 116, 174. [43] *Ibid.*, 187.

Penal Law, consisted of four distinct codes and a book of definitions. The divisions are listed as a Code of Crimes and Punishments, a Code of Procedure, a Code of Evidence, a Code of Reform and Prison Discipline, and a Book of Definitions. To each of the four Codes was prefixed an elaborate Report in which the principles, purposes, and provisions were fully explained. In the several s Livingston recommended legislative action especially designed to abolish all constructive offenses and all distinctions between strict and liberal construction of penal statutes. He proposed legislative enactment forbidding any departure from the plain letter of the written law and requiring the courts to acquit an accused when criminally prosecuted under an ambiguous act and to report the same immediately to the General Assembly. In every part of the work it is evident that Livingston gave careful attention to preserving complete unity of design, to avoiding ambiguity and mystery, and to preventing rather than avenging crime.

The Code of Crimes and Punishments is probably the most interesting part of Livingston's work. In the first book of this Code, embodying new materials,[44] he set forth the general provisions pertaining to the operation of laws, to prosecutions and trials, and to the circumstances under which certain acts, that would otherwise be offenses, might be justified or excused. Livingston explicitly confined offenses to such acts or omissions as were made the direct subject of legislative decision, and made provision to ascertain the comparative degree of guilt where crimes were committed by several individuals. Offenses were listed, classified, defined, and divided into two general categories, private and public injury, with the nature and extent of punishments enumerated

[44] *Ibid.,* 237.

for each offense. Livingston restricted the punishments to deprivation of personal liberty, of property, and of civil and political privileges. According to his scale of punishments, only fines, disfranchisement, and imprisonment could be inflicted, but these were varied and graduated in accordance with the nature of the crime and the circumstances that extenuated or aggravated it. These punishments, which were to be determined in the sentence of the offender, consisted of pecuniary fines, degradation from office, temporary suspension of civil rights, simple imprisonment, imprisonment at hard labor, and solitary confinement during certain intervals of the time of imprisonment.[45]

Livingston's attempt to introduce remedial legislation found expression in his plan to discard the disgusting, cruel, and ineffective methods of punishment and to replace them with his design to reform offenders. As a practical reformer he attacked capital punishment on the ground that it had failed in practice to accomplish the legitimate ends of punishment. It was no sentimentalist who agreed that " 'all punishments are but experiments to discover what will best prevent crimes; your favourite one of death has been fully tried . . . [and] all nations, since the first institution of society, have practised it . . . without success. All we ask, then, is that you abandon an experiment . . . which in all ages, under all governments, has been found wanting.' " As evidence that the death penalty neither reformed the criminal nor prevented crime, he cited several examples of English criminal jurisprudence. One of these English officials, a solicitor of more than twenty years experience, was quoted by Livingston to the effect "that the punishment of death has no terror upon a common thief; indeed, it is much

[45] *Ibid.*, II, 25–28, 31–37; I, 59–60.

more the subject of ridicule among them than of serious deliberation. The certain approach of an ignominious death does not seem to operate upon them; for after the warrant has come down, I have seen them treat it with levity." Neither this solicitor nor any of the other magistrates in their statements to Livingston indicated any movement in the English nation "to abolish the punishment of death," but rather the endeavor "to restrict it to the more atrocious offences." [46]

Livingston was cognizant of the difficulties to be encountered in his fight to abolish capital punishment, but this did not cause him to lessen his efforts to attain that objective. In explaining his lack of quotations "from modern writers on penal law to this point," he admitted that although there was "not one who has not given his testimony in favour of the position" he had taken, "yet, by a most singular incongruity, each of them has a favourite crime to which he thinks it inapplicable." Livingston was "fearful of having omitted many things that might have an effect in convincing any one of those to whom this report" was addressed. Notwithstanding the fact that he felt his "incapacity to enforce" the truth of the doctrine he had advanced, it was Livingston's "firm religious belief . . . [that] the truth will appear in spite of these obstacles . . . [and] her voice, like that of the Almighty from the mount, will be heard reiterating to nations as well as to individuals, the great command, 'THOU SHALT NOT KILL.' " His contemplated punishments in lieu of the death penalty were "imprisonment in its various grades," which found embodiment in his Code of Reform and Prison Discipline.[47]

Not only did Livingston hold that every individual should be familiar with those acts that constituted a vio-

[46] *Ibid.*, I, 58–59, 46. [47] *Ibid.*, 205, 223–24.

lation of law, but he also contended that every citizen should possess a knowledge of the means available to prevent injury to himself, to punish those who harmed him, and to defend himself when unjustly charged with injuring others. For this specific purpose the Code of Procedure pointed out the methods of preventing injury to oneself and of securing justice when injured. Livingston was aware of the general disregard of preventive measures; consequently, he emphasized the means of preventing offenses and of discontinuing those that remained in operation.[48] A method of preventing crime, which he stressed with great argument, contemplated the novel plan of rewarding individuals who were responsible for bringing offenders to justice. The treatment of the questions of the right of habeas corpus and trial by jury were significant; the magistrates, instead of the police officers, were required to issue warrants and all offenses were to be tried by jury. A unanimous verdict of the jury was stipulated, but a jury consisting of any number less than twelve that had been agreed upon previously could try misdemeanor cases. Specific instances were designated and governing rules were prescribed for the military force in those instances when it aided the civil power.[49] Livingston included a provision whereby law violators were given a preliminary hearing before magistrates, and as a protection to the accused the examinations before the magistrates were restricted to certain prescribed questions. A prisoner was not required to answer the questions but his refusal to do so militated against him. All answers were recorded, presented to the accused for his corrections and his signature, and transmitted along with other records to the trial court. In addition, the defend-

[48] *Ibid.*, 331–32, 346; II, 202–24.

[49] *Ibid.*, I, 335–44; II, 267, 276, 225–27; I, 347–49.

ant, because of his disadvantageous position, was permitted to close the argument and might "introduce testimony to repel that last offered by the prosecutor." [50]

Livingston was fundamentally opposed to judge-made law and planned "to check the legislation of the courts" by establishing the supremacy of the legislature; nevertheless, he conferred upon the judges "the right of pointing out defects, and suggesting improvements." [51] It was this concept of the interrelation between the formulation of the law and of judicial practice that Livingston embodied in his Code of Evidence. He held that the proper function of the judge was "to determine what is the true meaning of the Law when it is doubtful; [and to] decide how it applies to the facts when they are all legally ascertained." [52] But "the only legitimate power" to enact legislation was the General Assembly.[53]

The "quackery of judicial legislation," the "vacillating authority of decisions," and the conviction that the legislature alone possessed the right to determine what constituted an offense, culminated in the preparation of a "written code" because it was "the only public inspection office at which the stamp of authority is given to legal opinions, and by a reference to which their correctness may be tested." Livingston foresaw the inevitable "corruption and final destruction" of the Code if it admitted "judicial decisions, unsanctioned by law, to eke out its deficient parts, to explain what is doubtful, or to retrench what may be thought bad." [54] In the effort to guard against such a contingency, he included in this section

[50] *Ibid.*, II, 237–38, 477–78, 277.

[51] *Ibid.*, I, 13, 152, 170, 172, 231, 414, 173, 180–81.

[52] *Report on the Revision of the Civil Code*, 8.

[53] *Complete Works of Edward Livingston on Criminal Jurisprudence*, I, 414; II, 458–59.

[54] *Ibid.*, I, 181, 411, 15, 161, 173.

of the Penal Code the stipulation that when there was no provision for the rule of evidence the judges should base their decision upon principles which they thought would have governed the legislators had they anticipated the case, and report it to the General Assembly. Notwithstanding this provision, such judicial decisions would destroy the Code unless the gap were closed by the lawmakers; otherwise, the judge who had to decide without positive law "must frame his judgment by analogical reasoning from the law in similar cases." Since "all human works are attended with a greater or less degree of imperfection," Livingston reasoned, laws in their practical operation would violate justice, "either by embracing, under general expressions, cases not intended to come within them, or, by a too restricted phraseology, not providing for other cases which it was their evident object to include." "An ambiguous penal law," Livingston concluded, "is no law; and judicial decisions" could not "explain it without usurping authority which" did not appertain to the courts.[55]

Livingston maintained that whenever the judiciary construed a penal law beyond its expressed provision, it engaged in illegal ex post facto legislation. He recognized that in many instances the fault lay with the legislator who, by his careless drafting of the statutes, furnished the judge with the plausible excuse for exceeding his constitutional powers in assuming the legislative function.[56] Nevertheless, he contended it would be better for "acts of an evil tendency" to be committed without repression than to have the courts assume legislative power because such action by the judiciary would be more injurious than any violation the courts might attempt to check. In the case of a penal law which had been "so inaccurately

[55] *Ibid.*, 176, 171, 414, 170. [56] *Ibid.*, 13, 180, 414.

drawn, as to bring within its penalty an act that it could not, in the opinion of the court, have been the intention of the legislature to punish," he provided for the acquittal of the accused, but required that the case be reported to the next session of the legislature, or to a current session within eight days. Otherwise, he contended, the system of criminal proceedings in time would come to consist of "unwritten rules, promulgated by the judges by precedents often incorrectly reported; of uncertain authority when known; to be followed, according to some writers, however unjust or absurd; and, according to others, to be modified by the principles of *reason* and the *divine law,* that is to say, by caprice, or the bigotry, or the enthusiasm of the judge." [57] Such judgments, he argued, should not serve as precedents without legislative authorization,[58] for the courts should be "expressly prohibited from punishing any acts or omissions which are not forbidden by the plain import of the words of the law, under the pretence that they are within its spirit." [59]

The remedy for legal ambiguity, according to Livingston, was to be found in the legislature which "must eradicate the mischief, instead of suffering it to be tampered with by the quackery of judicial legislation." As "changes are required by the alteration of circumstances," [60] legislators should review judicial decisions periodically to incorporate "new and convenient principles they may establish, under their proper heads, in the frame of a code previously made," and thereby place "the stamp of legal authority" upon them. He held that his "effectual mode of clothing judicial wisdom and experience with legis-

[57] *Ibid.*, II, 15; I, 91. [58] *Report on the Revision of the Civil Code,* 10.
[59] *Complete Works of Edward Livingston on Criminal Jurisprudence,* II, 15.
[60] *Ibid.*, I, 181; II, 3.

lative authority" should stimulate the lawmaker to perform the duty of expanding and perfecting the framework embodied in the Code. Since "the defects of all laws" were "best discovered in their operation," Livingston concluded that in all cases relating to jurisprudence the judges were "the persons best qualified to point them out" to the legislature for its use.[61]

Livingston revealed his concept as to the method of attaining this perfection when he recommended that judges should periodically place before the legislature a record of all discretionary decisions as well as "regular reports of the ordinary cases of construction." These would enable the General Assembly "to explain ambiguities, supply deficiencies and correct errors that may be discovered in the Laws by the test of experience in their operation. By these means our Code although imperfect at first, will be progressing toward perfection," and judicial decisions "will be a means of improving legislation, but will not be laws themselves. . . . The Legislature will not judge, nor the Judiciary make laws." [62] Livingston's completed plan, according to his own statement, would "secure the advantages to be derived from the experience and wisdom of the judges in the suggestion of defects, while the remedy" was to be reserved to the legislature.[63]

The Code of Evidence not only contained a list of provisions designed to check the operation of provenly injurious rules, but also a delineation of the nature and kinds of admissible evidence with rules applicable to the different types of evidence submitted. Evidence, accord-

[61] *Ibid.*, I, 172, 173, 415.

[62] *Report on the Revision of the Civil Code*, 10.

[63] *Complete Works of Edward Livingston on Criminal Jurisprudence*, I, 415.

ing to Livingston, was "that which brings, or contributes to bring, the mind to a just conviction of the truth or falsehood of the fact asserted or denied." When applied to the determination of litigated rights, it must, he asserted, be restricted to what written law has declared "to be good evidence" sufficient "for the force of complete proof." When considering evidence in relation to its source, Livingston classified it according to "that which the judge derives from his own knowledge" and "that which is offered to him from other sources" designated as testimonial, scriptory, and substantive evidence. The knowledge which the judge derived from the extrinsic sources was to be considered in the light of its origin and weight. As to its origin, it might be personal communication, written instruments, or natural objects; as to its weight, it might ascend from mere induction to complete proof.[64]

In establishing rules concerning extraneous sources of evidence, Livingston introduced certain new principles of acceptable testimony. Under all circumstances he barred declarations of the insane and of mentally retarded children under the age of fourteen; Catholic priests and attorneys were excluded from giving testimony when they obtained knowledge of facts under circumstances that would make the disclosure an invasion of the right of personal liberty and conscience.[65] Livingston refused to exclude the testimony "of husband or wife, as witnesses, for or against each other," and gave to the individual the right to discredit his own witness either by cross-examination "to test his veracity" or by calling character witnesses.[66]

The Code of Reform and Prison Discipline was the

[64] *Ibid.*, 419–27, 498–99; II, 457–62. [65] *Ibid.*, I, 461–68; II, 465–66.
[66] *Ibid.*, I, 452, 471.

capstone of Livingston's Penal Code for it contained those peculiar benefits anticipated by the entire system. Since he had substituted imprisonment for the usual penalties, the efficacy of his entire project depended upon how well confinement could be made to answer the ends of punishment.

The most original and probably the most important feature of the proposed penal legislation was the establishment of public workshops to provide employment for all who were in need of the bare necessities of life. The criminal ranks drew their recruits from those who were unable to secure employment or who were able to work but refused to do so. Provision was made not only for the punishment of crime, but, in a large degree, for preventing it by placing one central agency in charge of the administrative machinery of the poorhouse, the workshop, and the reform school.[67] As independent organizations, these agencies had failed to function efficiently and effectively: the agency directing the execution of the penal laws could protect society by acting only after crimes had been committed; the organization charged with the administration of the poor laws was limited to the care of the needy and could exercise no control over them. Consequently, each was a preparatory school for the other and those persons stricken by poverty or with criminal records were shunted backward and forward without benefit either to themselves or to the community.[68]

As society was obligated to support members who were incapable of supporting themselves, it should possess the right to pass upon their incapacity. This right could be exercised only when a designated agency of society was clothed with supervisory authority over all persons who

[67] *Ibid.*, 529, 536. [68] Hunt, *Life of Edward Livingston*, 267.

were incapable of supporting themselves, who pretended to be so, and who desired to work but lacked employment.[69] The entire question should be dealt with as a unit and a central agency was to be placed in complete charge of the whole. Vagrants and beggars were to be taken into custody immediately and each assigned to his proper place. Persons unable to work were to receive simple support; unfortunates able and willing to work, but unable to secure employment, were to be furnished temporary subsistence and occupation; and individuals capable of work but refusing to earn a livelihood were to be compelled to do so.

In conformity with the uniform provisions of the entire system, all persons were to be classified and separated by sexes in such manner as to guard, as far as possible, against social contamination. Illegal idleness would no longer possess the appeal which the existing systems gave to it and would be shunned by many whom it presently attracted. The proposed machinery for the operation of the system contemplated a house of detention, a penitentiary, a house of refuge and industry, and a school of reform, all under the general superintendence of five inspectors. One chaplain and one physician would be sufficient for the four; but one warden and one matron would be required for each institution. In addition, a clerk and a teacher would be required for the penitentiary, and a teacher for the school of reform.[70]

The house of detention was designed simply as a place of imprisonment for those persons whose liberty, for the good of society, must be restrained. This group consisted of "either those upon whom imprisonment is imposed

[69] *Complete Works of Edward Livingston on Criminal Jurisprudence*, I, 533–34, 536.

[70] *Ibid.*, 540; II, 542–43; I, 584–85.

merely for the purpose of securing their appearance when the purposes of justice require it, or those upon whom it is inflicted as a punishment." The house was to be divided into departments to keep separate while in confinement those held for investigation, those accused of misdemeanor, and those charged with crime. The careful classification of individuals prior to the trial was urged as strongly as that following conviction and for the reason, among others, that it was intended to discriminate between classes of culprits.[71]

The penitentiary was the subject of Livingston's most intense study. He believed that while education could not be expected to produce uniform reformation, yet it would cause most convicts to emerge improved in character and in some instances totally reclaimed to industry and virtue. He secured statistics and information from other states and from Europe and made a careful study of the history of the penitentiary systems of Massachusetts, New York, and Pennsylvania. Although parts of several of the existing systems possessed value, he did not approve of any in operation. He concluded that the most desirable system that could be devised would provide for solitary penal confinement of every convict. The prisoner was to have sufficient wholesome but coarse food, and human attention only in the case of physical disability and for religious instruction. The prisoner who was desirous of reforming could secure a better diet, partial relief from solitude, and visitors at stated intervals by perseverance in labor, obedience, and moral conduct. Following a period of good conduct, the convict might be admitted to a class for instruction and after a long probationary period he would be permitted to work outside of the prison and receive on discharge a portion of

[71] *Ibid.*, I, 541, 543.

the proceeds of his labors. Deserving convicts, on being discharged, would receive a certificate of good conduct, industry, and skill in the trade learned or practiced while in prison, which might enable them to regain the confidence of society. These advantages were liable to suspension and forfeiture through idleness, irregularity, or lapse of good conduct.[72]

Disclaiming that his theories were too refined to be adapted to criminals, Livingston contended that "convicts are men." Their minds were moved in the same springs that gave activity to others; "they avoid pain with the same care, and pursue pleasure with the same avidity, that actuate their fellow mortals." It was only the false direction of these great motives that produced the criminal actions which they committed. "To turn them into a course that" would "promote the true happiness of the individual, by making" them "cease to injure society, should be the great object of penal jurisprudence." [73]

Their nature was not so inferior as to be incapable of elevation, nor so bad as "to make any amelioration impossible." Crime, Livingston believed, was "the effect principally of intemperance, idleness, ignorance, vicious associations, irreligion and poverty—not of any defective natural organization." He maintained that the laws which permitted "the unrestrained and continual exercise" of these conditions were "themselves the sources of those excesses which legislators . . . falsely ascribe to the Supreme Being." He was of the opinion that "every plan hitherto offered" to remedy existing conditions was "manifestly defective, because none has contemplated a complete system, and partial remedies never can succeed." Although disclaiming a perfect system, Livingston

[72] *Ibid.*, 507–23, 526–58; II, 567–77. [73] *Ibid.*, I, 562–63.

maintained that his plan was founded upon harmonious principles, that it had "a unity of design," and embraced "a greater combination of provisions, all tending to produce the same result, than any that has yet been practised." [74]

Unless provisions were made to assist the convict in his readjustment to society, all the "happy effects will be counteracted; the care, labour and expense of your reformatory discipline will have been uselessly incurred." Society owed to the discharged convict the opportunity to utilize "the skill necessary for his support" which he had acquired during his confinement. It was to this end that Livingston would establish the house of refuge and industry with one department for voluntary laborers and another for enforced servitude. In the house of refuge, those individuals physically able and desirous of earning their livelihood, but unable to secure employment, would find occupation and compensation for their work. In the house of industry able-bodied and willful beggars would be placed the moment they were detected practicing their vocations. Both classes, however, would receive the hospitable care of the establishment and upon leaving would be furnished with credentials attesting to their good conduct provided they deserved it.[75]

The last part of the proposed plan of a penitentiary system, the school of reform, was designated as a place of punishment for all under eighteen years of age sentenced to any term of "imprisonment and labour" for less than life, and for the confinement of all vagrants under that age and above six years. Provisions were made for a complete separation of the sexes and the assignment of each prisoner to a separate cell. Inmates were to be

[74] *Ibid.*

[75] *Ibid.*, 564–66; II, 599–604.

employed in open courts within the inclosure or in shops, and for each division there was to be a school and infirmary.[76] Each inmate would receive instruction in one of the mechanical arts, and, if necessary, would be required to apply it, with only certain intermissions set aside for meals, instruction, relaxation, and sleep. A competent teacher would be placed in charge of the instruction, and discipline would be persuasive so long as that method would serve but coercive when conduct required. Those confined in the school of reform were to be discharged "either by the expiration of their term of service or by apprenticeship." Except by apprenticeship, no male under twenty-one or female under nineteen years of age was to be released notwithstanding the term of service prescribed in the sentence. Discharge from apprenticeship was to be made only after two years of residence in the institution and after having attained a certain proficiency in elementary education. Before the inmate could be set at liberty he must have merited the warden's written recommendation, approved by the inspectors.[77]

While Livingston attempted to execute in its entirety the mandate expressed in the law of 1820 concerning a code of criminal law, he gave special attention to the clause which recited that it was "of primary importance . . . that all offenses should be clearly and explicitly defined, in language generally understood." In his four Codes he never used technical terms if he could find common expressions that were sufficiently definitive. Of necessity, he could not follow this procedure in every instance. Consequently, he prepared the Book of Definitions to clarify words or phrases that were technical or

[76] *Ibid.*, II, 576–78, 580–84, 579–80.
[77] *Ibid.*, 580–82; I, 573; II, 587–97.

unusual. This brief supplementary book was added to make the entire work both explicit and concise.[78]

The philosophy enunciated in *A System of Penal Laws* was a radical departure from existing practices and Livingston's work failed to receive legislative sanction. Considerable opposition to the plan developed early, effectively led by a number of judges. They resented the provision to restrain them from following precedent in rendering a decision unless sanctioned by legislative enactment. Judge Seth Lewis of the fifth judicial district issued a pamphlet attacking the program. According to a correspondent in the *Courier,* "Judge Lewis shudders at the idea that Mr. Livingston has dared to place some limits to the boundless powers hitherto granted to Judges, as regards the punishment of what is termed contempts of court." The writer suggested that "one should peruse [in the pamphlet] the lamentations of Judge Lewis" for "it is then that one can see at full length . . . [the] sad fate reserved to judges deprived of the power of deciding arbitrarily and without appeal." He maintained that, with few exceptions, it was the judges "who voice opinions against the Code," and "self is the only object in the meditations of such men" whose careers were "closed except to draw pay." [79]

The refusal of the Louisiana legislature to accept the Code can doubtless be ascribed to a more fundamental reason than judicial opposition. In his concept of social relations, Livingston was in advance of his age; he was

[78] *Ibid.,* 609–38. While in Congress Livingston prepared a uniform system of penal laws for the United States. Except for the treatment of "Offences Against the Sovereign Power of the United States" and of "Offences Against the Laws of Nations," it was similar to the Louisiana Code. It was printed by order of the House in 1828, but no legislation followed.

[79] New Orleans *Louisiana Courier,* January 30, February 6, 1826.

a liberal who attempted to translate into practice his theory of the protection of civil liberties by practical measures.[80] There were, he stated, "mutual obligations between society and the members who compose it," the object of which was "the protection of life and property." Of these, "the preservation of life" was the first object, that of property, "only a secondary one." He decried the system which prevailed everywhere from the earliest times, wherein "the interest of the many" had in most instances "been sacrificed to the power of the few" who were supported by existing penal laws.[81] In the attempt to rectify the existing conditions, Livingston's idealism came into conflict with the material interests of his period. His theory of liberal social relations was too advanced in tenor, for the social basis of Louisiana was not liberal. In this project he had ceased to reflect the needs of a slaveholding, agricultural society; consequently, this serious design was rejected.[82] Therefore, even had Livingston continued as a member of the legislature and remained in the state, the possibilities are remote that he could have overcome the objections and fears of the Louisiana Assembly by his personal influence.

Although neither the Commercial Code nor the Penal Code received official sanction, Livingston's work as a codifier proved profitable in the dividends returned. His contributions to the Civil Code and the Code of Practice greatly enhanced his reputation as a leader in the field of jurisprudence. The publication of the Penal Code

[80] For a fuller development of this thesis, see Mitchell Franklin, "Concerning the Historic Importance of Edward Livingston," in *Tulane Law Review*, XI (1937), 163–212.

[81] *Complete Works of Edward Livingston on Criminal Jurisprudence*, I, 533, 54.

[82] Franklin, "Concerning the Historic Importance of Edward Livingston," in *loc. cit.*, 164, 210–12.

made him an international celebrity. From philosophers, prominent writers upon jurisprudence, statesmen,[83] and publicists of America and Europe came expressions of appreciation of the work of the lawgiver. The rulers of Russia, Sweden, and the Netherlands commended his work and the leaders everywhere in the field of social reform praised the Penal Code. Kent, Marshall, Du Ponceau, Joseph Story,[84] and even Jefferson, expressed keen interest in many of the details of the work. "I am pleased," wrote Jefferson, "with the style and diction of your laws." Continuing, he said, "One single object, if your provision attains it, will entitle you to the endless gratitude of society, that of restraining judges from usurping legislation." [85]

The name of Livingston was illustrious. His work on penal reform was printed in France,[86] England,[87] and other countries. The government of Guatemala had the

[83] "I was much pleased with it [the Criminal Code]. I told him [Livingston] there were many of its opinions with which I fully concurred, and some upon which my mind was perhaps not so clearly made up." Charles F. Adams (ed.), *Memoirs of John Quincy Adams* (Philadelphia, 1874–1877), VI, 55.

[84] Hunt, *Life of Edward Livingston,* 278–79.

[85] Jefferson to Livingston, March 25, 1825, in Lipscomb (ed.), *Writings of Thomas Jefferson,* XVI, 112–14.

[86] M. A. H. Taillander (ed.), *Rapport sur le projet d'un Code pénal fait l'Assemblée générale de l'état de la Louisiane, par M. Édouard Livingston* (Paris, 1825).

[87] Edward Livingston, *Project of a New Penal Code for the State of Louisiana* (London, 1824). In the preface of this English edition it is stated that the publication by the distinguished author "contains the statement and development of principles of the highest importance, which can not but be read in England with interest. . . . America owes much to England; . . . may she pay back the benefit by exciting her benefactress to emulate her example! It is in the hope that the publication of this pamphlet in England may contribute in some degree to produce an effect so much to be desired, because so much needed, that it is given to the British Public."

Codes translated into Spanish and adopted the Code of Reform and Prison Discipline; the penal legislation of several other Spanish-American countries was influenced by the work; and Thomas B. Macaulay gave serious consideration to Livingston's Penal Code as a basis for the laws of India. Victor Hugo classed Livingston "among the men of this age who have deserved most and best of mankind." Abel-François Villemain declared the penal law a "work without example from the hand of any one man." Sir Henry S. Maine described Livingston as "the first legal genius of modern times." [88] Jeremy Bentham, the great English social reformer, urged that Parliament "print Livingston's Louisiana Codification" for the guidance and use of the English nation.[89] Dr. Southworth Smith, the legal authority, published an article in the *Jurist* praising Livingston's treatment of penal reform.[90]

In 1831 Livingston received from the King of the Netherlands an exquisite gold medal. On one side of it was an impress of the bust of the King and on the other the following inscription: "To Edward Livingston for the presentation by him of a Copy of the Criminal Code of Proceedings Composed by him for the State of Louisiana." [91] While failing to enact into law the Penal Code, the Louisiana legislature followed the example of the Netherland King. On January 16, 1832, by legislative action, the Governor of Louisiana was authorized to purchase a gold medal, and "tender the same to the honorable Edward Livingston as a token of acknowledgment on the part of the State of Louisiana, for the Code of Civil and

[88] Hunt, *Life of Edward Livingston,* 276–81.

[89] Jeremy Bentham to O'Connell, March 15, 1830, in John Bowring (ed.), *Works of Jeremy Bentham* (London, 1843), XI, 37.

[90] *Id.* to Livingston, February 23, 1830, *ibid.,* 35.

[91] Washington *Daily National Intelligencer,* January 11, 1831.

Criminal Law, presented to the State by that distinguished gentleman." [92]

The codification movement in Louisiana was coincident with similar activities elsewhere in America and in Europe during the late eighteenth and early nineteenth centuries. The movement was an outgrowth of the conflict between the liberal ideology of the period and the feudal society that had dominated the world for centuries.[93] Other than in America, which never had a feudal past, liberal social relations came late in history and developed along different lines in the several countries. In France the conflict had led to a victory for liberalism in 1789 that culminated in a translation of the social achievements into legal form in the Civil Code. This French Code greatly affected Livingston as did the various aspects of the development that led to the American Revolution and to the rise of Benthamism in England. Although Livingston reflected in many ways the tendencies of these three great international movements, he created an ideology different from any that actually prevailed, one that "almost reached the threshold of socialism." His ideological concepts, however, were fundamentally "a reflection of the bourgeois social bases that then existed."

Livingston's arguments for codification were set forth in his views of the democratic state and the main factor in his thought was democracy. To him, democracy and the leadership principle were incompatible. It was this conception of democracy that caused him to attack the "leadership principle with an Anglo-American content, which makes the judge the leader." For the same reason

[92] New Orleans *Louisiana Courier,* January 17, 1832.

[93] Franklin, "Concerning the Historic Importance of Edward Livingston," in *loc. cit.,* 163–87.

he attacked the absurdities of the feudal Spanish law and strove to protect civil liberties. Livingston discovered the approximate place of the working class in society and made conscious effort to represent it. In his devotion to democracy he veered from the tenets of classical liberalism when he formulated his theory regarding the basis for relief against unemployment. During the period of Livingston's leadership of the codification movement in Louisiana, the American common man was restive. His demands for political and social justice, at first inarticulate, culminated in the movement that placed Jackson in the presidency. The philosophy of this democracy found expression in the Codal works of Livingston, the politician and jurist. With the upsurge of democracy, this codifier was assured political recognition.

Chapter XII

A LOUISIANA CONGRESSMAN

THE 1820 Federal census gave Louisiana an additional representative in Congress. In creating the new congressional district, the Louisiana General Assembly of 1822 transferred from the New Orleans district the West Florida area and the territory to the right of Bayou Lafourche from the point of its confluence with the Mississippi River to the Gulf of Mexico.[1] This resulted in removing a considerable group of the American element from the New Orleans district and in leaving the French party the dominant element therein. Livingston's chances of success in national politics were increased by this shift of the large American vote which had contributed greatly to his defeat for Congress in 1812, in 1818, and again in 1820.

It was fortunate for Livingston that Josiah S. Johnston defeated him for United States Representative in 1820,[2] as it resulted in Livingston's candidacy and election to the state legislature later in the same year, where his work on the codes brought him into national and international prominence. After the new congressional district was created and prior to the adjournment of the legislature

[1] Louisiana *Acts*, 1822, p. 58.

[2] New Orleans *Louisiana Courier*, July 9, 1820. In Orleans, Plaquemines, and the German Coast parishes, Livingston led Johnston 603 to 274, but Johnston's vote in the interior parishes overcame this lead.

in 1822, he was laying his plans for the congressional fight of that year. The state administration headed by Governor Robertson was favorable to his candidacy, and he was able to secure the support of Moreau-Lislet, Grymes, and other politically strong members of the General Assembly. He induced Moreau-Lislet, Grymes, E. Mazureau, former attorney general under Claiborne, and his own brother-in-law, Davezac, to run for state offices on his ticket. As there was no disposition on the part of the national government to give him any trouble, he was able to create a situation in which he was so strong that no one dared announce against him.[3] Moreau-Lislet was elected to the Senate and three of his six candidates for the House, Grymes, Mazureau, and Davezac were victorious.[4]

During the interval between the time of his election and that of his departure for Washington in December, 1823, Livingston continued the practice of law, and also devoted considerable time and energy to fostering Jackson's candidacy for president. If not the original, he was one of the original Jackson-for-President men of the nation and was zealous in furthering the political advancement of his friend.[5] The Livingston forces became the Jackson party in Louisiana, and these forces conducted an intensive campaign to secure the electoral vote of the state.

When Livingston took his seat in the House December 18, 1823, more than twenty-two years had elapsed since he last sat as a member of that body. Twenty-two years is a long period in the life span of a man, and, during Livingston's absence from Washington, many changes had taken place in the life of the nation. The entire Missis-

[3] *Ibid.*, June 19, 24, 1822. [4] *Ibid.*, July 3, 5, 1822.

[5] James Parton, *Life of Andrew Jackson* (New York, 1888), III, 17–18, 30.

sippi Valley region west of the river had been added to the Federal domain and the number of states in the Union had been increased from sixteen to twenty-four. Washington had grown from a straggling village to a city of twenty thousand inhabitants. Not only had the scene changed, but the drama was being enacted upon a new stage, thanks to the burning of the capitol by the British, which had necessitated the erection of a new capitol, president's house, and executive offices. Most of the leading actors with their supporting casts had made their exits, and a galaxy of new stars with their understudies crowded the stage, each attempting to secure the leading role. Now, apparently, the scenes shifted more quickly, the movements of the actors were less hesitating, and their lines were spoken with greater assurance. Their poise and self-possession bespoke a confidence of a more firmly established government and a conviction of their ability to solve the existing problems without delay.

These new leaders appearing shortly before and during the War of 1812 had an abiding faith in the future and were not afraid that a strong central government would destroy liberty. They were deeply conscious of the evils of a weak government as revealed by the experiences of the recent war, and with firm hand set about the task of rectifying the conditions. They were determined that no longer were foreign affairs to direct, but rather to be directed by, internal politics. The assumption of state debts, the freedom of the press, and the impressment of seamen, so vital at the turn of the century, were no longer important problems; but those relating to banking, state rights, and nationalism continued to challenge public interest.

Whitney's cotton gin was a significant factor in augmenting cotton production, and this, in turn, stimulated

the spread of slavery in the interior parts of the South. The invention of spinning and weaving machinery and the application of water and steam power led to the introduction of the English manufacturing system and this already was relegating commerce to an economic position of secondary importance along the Atlantic seaboard area and more especially in New England. Just as the slave-operated plantations in the South led to the development of an agricultural aristocracy, so, in the North the rise of the manufacturing interests created an aristocracy of industry that rivaled and in time supplanted the old one of commerce. The fears that had existed in the South from the beginning of the national government that the North someday would use her position in the Union to restrict slavery were being increased by the heated debates in Congress over the institution of slavery. The admission of Missouri as a state in 1821 had forcibly centered national attention on this question, but, temporarily, it had been shelved by the Compromise effected by the moderate men of the middle states and of the border states of the South. In general, the leaders of the period agreed that provision should be made for national defense and that a United States bank should be incorporated to aid the government in its financial operations. On the questions of internal improvements and the tariff, however, there were decided differences of opinion.

The war had aroused much interest in the rich lands of the Northwest and there was a great movement from the East and Europe to that region. The most direct routes were overland either from the Potomac or from Philadelphia, or through western New York to the lakes. The construction of roads and canals was desirable for a quicker and easier westward movement, and the cham-

pions of the policy of internal improvements maintained that the Federal government should aid in the construction of these land and water highways, for they were national enterprises and were too expensive for individual or state effort. The opponents of the plan declared that they were local improvements and the Constitution did not grant to Congress the power to raise money for such purposes.

The division over the tariff question was on an occupational basis rather than on a sectional or party basis. The manufacturers demanded an increase of the duties as a protection from foreign competition. The commercial leaders, who throve on free importation, clamored for a lower tariff rate. But this group had received little consideration as they had opposed the war and, at heart, were Federalists. During the patriotic fervor immediately following the war, the agricultural sections of the nation unselfishly had made sacrifices in order to be independent of European manufacturers, but later they came to the conclusion that protection had gone too far and opposed it vigorously. In this change of attitude the South as the great agricultural section was most prominent. Such were the conditions in 1823, when Livingston returned to Washington.

In congratulating Livingston upon his return "to the councils of our country," Jefferson, in retirement at Monticello, accurately portrayed conditions in Washington when with prideful yearning for "our old school in Congress, in which your early labors were so useful," he warned the Louisianian that he would find new names—but still opposing views.[6] Madison, at Montpelier, was

[6] Jefferson to Livingston, April 4, 1824, in Lipscomb (ed.), *Writings of Thomas Jefferson,* XVI, 23–26. For reconciliation of Jefferson and Livingston, see *infra* Chap. XII, n. 65.

also in retirement; and John Adams was spending his last years in his New England home. Fisher Ames, Bayard, Elbridge Gerry, Gouverneur Morris, and Hamilton had answered the last roll call. The presses through whose columns the "opposing views" had appeared had been replaced by others to give expression to the statements of the "new names." In the place of Philip Freneau's *National Gazette,* John Ward Fenno's short-lived *Gazette of the United States,* and Benjamin Franklin Bache's *Aurora and General Advertiser* were the partisan publications, Gales and Seaton's *National Intelligencer* and, beginning in 1826, Duff Green's *United States Telegraph.* A little later, when the intraparty fight became very bitter, the administrative organ, the *Globe,* under the editorship of Francis P. Blair, was launched to give the Jacksonites a medium of defense.

Burr's actions had removed him from the field of politics and Albert Gallatin had just returned from a seven-year stay in France at the Court of Louis XVIII. Unable to sense the drift of political currents from the distance, he became engulfed in the seething factional politics which brought to a close the so-called "Era of Good Feeling." Following Gallatin's nomination for vice-president on the William H. Crawford ticket by the Congressional Caucus of 1824, his illustrious public career came to an end with the English mission, 1826–1827. Only five of Livingston's former colleagues in the House continued as members of Congress. Four of these, Nathaniel Macon of North Carolina, Littleton W. Tazewell of Virginia, Samuel Smith of Maryland, recently appointed to the William Pinkney vacancy, and the former Virginian, David Holmes of Mississippi, were in the Senate. In the House, erratic John Randolph of Virginia alone remained. Livingston's old adversary John Mar-

shall, by his decisions as chief justice of the United States Supreme Court, was giving direction to the current of constitutional history of the national government and bringing to himself credit and distinction. James Monroe, lacking the qualities for constructive leadership and barely escaping failure on numerous occasions, was nevertheless successfully satisfying the demands of the time as president.

Of the dozen most outstanding statesmen of the time, four were in Monroe's cabinet: Attorney General William Wirt, Secretary of the Treasury William H. Crawford, Secretary of State John Quincy Adams, and Secretary of War John C. Calhoun. Wirt was interested primarily in law, but later was the Antimasonic candidate for president. The other three possessed immediate ambitions to succeed Monroe and each planned his course of action to attain this objective in the 1824 contest. Crawford had come near defeating Monroe in 1816 and, although in chronic ill health, had considerable influence as a result of the patronage of his office and the support of a large part of the Administration press. As his ideas on the question of state rights and internal improvements were more nearly in accord with those of Jefferson, he was favored by the former President and the Virginia political organization. Adams occupied the most important position in the official family as the office of secretary of state had come to be considered a stepping stone to the presidency. His appointment came as a result of Monroe's effort to keep the support of both Crawford and Henry Clay. Both of these men were aspirants for the position and the appointment of either would have alienated the support of the unsuccessful candidate. When the appointment went to the son of a former chief executive, Monroe estranged neither of the two men for

everyone felt at the time of the selection that the appointee could never be president. Upon his recall from the Court of St. James in 1817, where he had been for the past five years, this vigorous nationalist, Adams, applied himself to the job and earned an enviable reputation. Calhoun, ambitious and highly intellectual, was one of the most extraordinary men of that period. He was endowed with a remarkable power of clear analysis, logical reasoning, and profundity of expression. During the wave of nationalism that followed the War of 1812, he was an advocate of a national bank, internal improvements, and a moderate protective tariff.

The most prominent men outside of Monroe's cabinet were Clay and Jackson. The watchful, persuasive Henry Clay was a Virginian by birth but had moved to Kentucky when a young man. As a representative in Congress from that state, he was one of the foremost war hawks in bringing on the War of 1812. He had served as commissioner to Ghent, but most of his long political life had been spent in the House over which he had presided with brief interruptions for thirteen years. He was the leading advocate of internal improvements and favored a protective tariff. Jackson, who had resigned his seat in the United States Senate in 1798, was again returned to that body by the Tennessee legislature in 1823. When he took his seat, December 5, his views on the questions relating to the tariff and internal improvements were not known; his chief asset was his personal popularity which rested upon his military record.

Few, if any, other congressional rosters contain the names of as many men who have influenced the course of American history as the one for the Eighteenth Congress. Among the new members of the Senate who soon attained fame and influence were Robert Y. Hayne of

South Carolina; Martin Van Buren, whose sobriquet "Red Fox" was later changed to "Little Magician," and Rufus King, who ably represented New York. As champion of the interests of the western region, Thomas H. Benton of Missouri had attained national recognition and possessed considerable influence and power. The rise to prominence of Tennessee's senior Senator, John H. Eaton, came as a result of his friendship with Jackson. John Branch of North Carolina later became a member of Jackson's cabinet.

Livingston's colleagues in the House equaled those of the Senate in ability, influence, and power. In addition to Clay and Randolph, the leonine Daniel Webster of Massachusetts had come to be considered one of the outstanding men in public life. Even before he became a senator, his reputation as an orator had been established. Not until Adams's Administration did he evince those nationalist principles which characterized his political thinking during the second quarter of the century. James Buchanan of Pennsylvania and John Forsyth of Georgia were later to rise to prominence in national politics, as was Sam Houston of Tennessee as president of the Republic of Texas. Jackson's election in 1828 resulted in the promotion of Samuel D. Ingham of Pennsylvania to a cabinet position and the assignment of Louis McLane of Delaware to the diplomatic post in London. McLane's successful negotiations with regard to trade relations with the West Indies earned for him a cabinet appointment following the "Eaton imbroglio."

In 1823, when Livingston arrived in Washington, there was little apparent tendency toward a cleavage in the body politic into two general opposing groups over the question of a national, as opposed to state rights, policy concerning internal improvements. Crawford and Jack-

son with their followings were inclined, but not positively committed, to the policy of strict construction. On the other hand, Adams, Clay, and Calhoun held to the loose construction view of the powers of the national government. With the changing economic conditions and the divergent interests of the various sections, it was inevitable that the intraparty contests in which all of the candidates, broadly speaking, professed the same principles would change from a campaign of opposing persons to one of principles and issues.

Livingston need not have feared, as he wrote his friend Peter S. Du Ponceau, that he would "be of no use" in Congress since he had been "so long retired from public affairs" and was "an utter stranger to the politics of the day," [7] for he soon became one of the best known national characters and most influential members of the House. This tall, slender, slightly stoop-shouldered, clear-cut featured man of fifty-nine years had returned to Washington at the time of a second, though fundamentally different, transitional period in American political history. Although dignified in manner, he possessed so genial a disposition that he was a delightful companion when with intimate friends. His social charm enabled him to make friendships without regard to political affiliation or social status, which were never strained by professional jealousies or political differences.[8] He was ably supported in his public life by his charming wife who made his adjustments less difficult.

"Among all the women of the period," says Bowers, "none approached Mrs. Livingston in brilliance, charm,

[7] Hunt, *Life of Edward Livingston,* 283.

[8] *Ibid.,* 122–23; Charles Gayarré, "The New Orleans Bench and Bar in 1823," in Thomas M'Caleb (ed.), *The Louisiana Book; Selections from the Literature of the State* (New Orleans, 1894), 68.

and elegance," nor "in the lavishness and taste of her dinners and parties" which were conceded to be " 'the best in the city.' " This leader " 'in the fashionable world' " was "wonderfully vivacious, eloquent in conversation, intelligently interested in politics, steeped in the literature of the ages, witty and spirited," and "her home in Lafayette Square more nearly resembled a salon than anything the capital has ever known." Everyone was delighted to attend her dinners, which were described as being unequaled by anything seen in Washington " 'except at some of the foreign ministers',' " and were always served " 'exclusively in the French style.' " In her drawing room one might meet "John Marshall, Joseph Story, and Bushrod Washington of the Supreme Court, Webster, Clay, Calhoun, Wirt, or Randolph." Here the various political leaders met, "glad to lay aside their partisanship at her threshold" and smile "amicably upon each other." She was as popular with the cultured women of the city as with the political leaders, and "Mrs. John Quincy Adams and Mrs. Andrew Stevenson came and went in the house on the Square with as little ceremony as members of the household." [9]

While Livingston enjoyed the social life of the capital, he did not allow it to interfere with the discharge of his official duties. He was regular in attendance at the sessions and actively participated in the deliberations of the House during the six years he was a member of that body. He was a practical politician; yet, he refused to sacrifice principle for temporary political expediency. Although his political philosophy may have been influenced by that of his constituents, he was consistent in the expressions of his convictions. No young politician

[9] Claude G. Bowers, *The Party Battles of the Jackson Period* (New York, 1928), 22.

could have been more attentive to the requests, more zealous to promote the welfare, and more active to guard the interests of the people of his district, both as representative and later as senator, than he.[10] Certainly none took more pains to inform them of his efforts and accomplishments than did Livingston.[11]

He was too good a publicist not to keep the people of Louisiana fully informed of his activities. His political partisans were loud in their praise of him, vigorously resentful of any effort to disparage his endeavors, and alert to forestall any attempt to give precedence to another. They sought to promote his interests on every occasion, and during the 1828 campaign his friends in the New Orleans City Council moved for a dispensation of the rules and the adoption of an address of thanks and gratitude to Livingston "for his conduct in Congress." [12] When an opponent attempted to defeat the positive effect of such action by offering an amendment to include the names of the other members of Congress to prevent its being "a direct insult to the rest of our delegation," a friend of Livingston sharply retorted "that he was indignant" that anyone would dare "compare our other representatives in Congress to Mr. Livingston." [13] In 1826 the *State Gazette* blandly asserted "that it is mainly to Mr. Livingston's talents that Louisiana owes the elevation she holds among her sister states." While it may have been debatable that "in the discussions of every

[10] New Orleans *Louisiana State Gazette,* June 9, 1826; Livingston to John McDonogh, February 20, March 16, April 20, 1830, in John McDonogh Papers (Bibliotheca Parsoniana).

[11] New Orleans *Louisiana Courier,* May 15, 1824, carried an "Extract of a Letter of Edward Livingston, Esq. to a Gentleman in this City," in which are recited Livingston's efforts during the current session of Congress "which are extremely important to our state."

[12] New Orleans *Bee,* June 23, 26, 1828. [13] *Ibid.,* June 26, 1828.

great and important question on the floor of Congress," his influence was "sought after by its advocates as almost decisive of its fate," [14] yet their Representative certainly was a man of influence to whose accomplishments they could point with justifiable pride.

During the debates on internal improvements and the Panama mission, Livingston easily measured up to the standard set by his friends. His treatment of the involved constitutional questions of these controversial issues fully demonstrated that his mental vision was as clear and his analytical mind as orderly as it had been almost a quarter of a century earlier when, speaking in this same chamber, he established his reputation as an authority on constitutional law.

By his first action, Livingston committed himself to the policy of internal improvements. Four days after taking his seat, he called upon Congress to erect lighthouses along the Florida coast, and to acquire land on the Island of Abaco and in other places on the Bahama banks for erecting lighthouses and beacons.[15] He introduced a resolution providing for the construction of a direct road from Washington to New Orleans and urged the President to sponsor the proposition.[16] He strongly advocated the adoption of judicial reforms that would insure Louisiana an equal status with the older states of the Union and would make the practice of the courts of the United States conformable to that of the state courts. In response to a petition "of sundry aliens residing in the State of Louisiana," he moved that the naturalization laws be amended in order "that greater facilities may be afforded to for-

14 New Orleans *Louisiana State Gazette,* July 3, 1826.

15 *Annals of Congress,* 18 Cong., 1 Sess., 869–70.

16 Livingston to the President of the United States, June 17, 1824, in New Orleans *Louisiana Courier,* October 23, 1824.

eigners intending to become citizens of the United States." [17]

Livingston's activities were varied and were not restricted to questions of a local nature. He proposed a constitutional amendment providing for the election of the president by direct vote of the people.[18] He presented resolutions calling for the enlargement of the Military Academy,[19] and the appointment of a committee to investigate the necessity of "establishing an Academy for instruction in those sciences necessary for service in military marine." [20] He introduced a bill to construct a canal to connect the Mississippi River and Lake Pontchartrain, and voted for the Cumberland Road appropriation.[21] He requested an appropriation of $50,000 for the relief of the Greeks [22] and handled his constituents' claims for damages against the government.[23]

When it became known, from Lafayette's letters to Livingston [24] and his other friends in America, that he contemplated a visit to this country, the House took official cognizance of the fact. Livingston's committee framed the resolution requesting the President to convey the sentiments of the government and the people of the United States to the distinguished Frenchman and to inform him that "a ship-of-the-line" was being held in readiness for his passage "therein, whenever his disposition to visit this country be signified." [25] While speaking to the resolution, Livingston eulogized the Marquis and

[17] *Annals of Congress,* 18 Cong., 1 Sess., 1528.

[18] *Register of Debates,* 19 Cong., 1 Sess., 1464.

[19] *Annals of Congress,* 18 Cong., 1 Sess., 877.

[20] *Register of Debates,* 18 Cong., 2 Sess., 111.

[21] *Ibid.,* 19 Cong., 1 Sess., 2663–64; 2 Sess., 1418. [22] *Ibid.,* 2 Sess., 577.

[23] New Orleans *Bee,* February 9, June 23, 1828; *Register of Debates,* 20 Cong., 1 Sess., 899, 902–904, 987–89, 2081, 2083.

[24] New Orleans *Louisiana Courier,* February 14, 1824.

[25] *Annals of Congress,* 18 Cong., 1 Sess., 1101.

alluded to him as "the only surviving General officer of the Revolutionary war." [26] He was eager that his old friend should be duly honored officially while in America and notified the Mayor of New Orleans that he would furnish him with Lafayette's itinerary so that the city would have sufficient time to plan a suitable reception.[27] He actively supported the bill providing for the appropriation of $200,000 and the grant of a "township of land" to the General and his heirs [28] as a slight token of appreciation of the United States for the services he had rendered the colonies during their struggle for independence.

Livingston's efforts in behalf of the officers and soldiers of the Revolution were not confined to Lafayette. He was one of the most zealous advocates of their rights and favored the appropriation of $1,000,000 for the soldiers and the "surviving widows and orphans of those officers who had died in service or since." As an expression of the veterans' appreciation, he was unanimously elected an honorary member of the Society of the Cincinnati on July 4, 1827. In referring to the election, the *United States Telegraph* stated, "It is an honor, even to Edward Livingston, talented and distinguished as is he, to be made associate of such an order of men" which had only ten living honorary members, among whom was Jackson.[29]

The New Orleans Representative opposed the tariff measures of 1824, 1827, and 1828, as they were detrimental to the people of his district. While protesting in 1828 that the whole system was "false and vicious in

[26] *Ibid.*, 1103.

[27] Livingston to J. Roffignac, September 24, 1824, in New Orleans *Louisiana Courier*, October 26, 1824.

[28] *Register of Debates*, 18 Cong., 2 Sess., 55–56.

[29] Washington *United States Telegraph*, July 9, 1827.

principle, because it went to tax one part of the country for the benefit of another," [30] he was able to secure a reduction of the duty on French wines and an advance of the duty on molasses.[31] In order that his constituents might have "some share in it, if any was to grow out of it," Livingston definitely stated his policy when, speaking against the 1824 tariff bill, he requested a formal report so that "he might have something to show to his constituents, and quiet their apprehensions." [32]

Except for the tariff, the most important question before the Eighteenth Congress was the internal improvements issue. The rapidly developing country needed roads and canals for communication and transportation and it was inevitable that the sections most interested in such improvements should demand that the construction of these roads and canals be undertaken by the national government. In response to this demand a bill was introduced in the House, which provided for the survey of roads and canals that the President "may deem of national importance in a commercial or military point of view or necessary for the transportation of the mail."

Opposition to the bill was not on the basis of need but on the question of constitutionality. The state righters immediately saw a new threat to state sovereignty. The national government, they argued, would have jurisdiction over the roads and canals when constructed; it would, of necessity, acquire ownership of property upon which the improvements were made; it could, under the proposed bill, create corporations possessing exclusive privileges and powers; all of which was an unconstitutional invasion of powers reserved to the states.

[30] *Register of Debates*, 20 Cong., 1 Sess., 2327.
[31] *Ibid.*, 2745–46; Washington *United States Telegraph*, May 27, 1828.
[32] *Annals of Congress*, 18 Cong., 1 Sess., 1590.

While vigorously asserting his advocacy of state rights, Livingston on February 9 contended that the general government possessed the requisite power under the Constitution to effect the provisions of the bill. In answering the constitutional objections, he gave a full exposition of his concept of the national Union, a concept to which he consistently adhered in all of the later controversies. The present government, he maintained, was both a consolidated and a federated one. Its consolidated features were shown by the adoption of the Constitution by the people; the equal representation of the people in the lower house of Congress; and the fact that each citizen was a citizen of the whole nation, holding in common with others certain possessions as citizens of the United States, independent of state authority, protected by the national judiciary and executive power. The federative features, he pointed out, were shown in the assent of the states to the submission of the Constitution to the people; in the representation of the states in the Senate; and in the retention by the states of all powers not vested in the general government or retained by the people.

As a consolidated government, it acted in the interest of all the people and the authority for and limitation to such action were found in the Constitution. As a federated government it acted immediately on individuals to protect their civil rights—their persons, lives, and property. The actions of the government in its consolidated sphere could not be performed by the states, for it would involve one state judging and determining what was beneficial to the whole. The bill in question, Livingston concluded, was for the benefit of the entire nation, a legitimate field for the action of the national government. Constitutional authority for the exercise of the powers by Congress was not only strongly implied from

the form of the national government but specifically granted in several articles of the Constitution, which he cited.[33]

This was the first speech by Livingston on the interpretation of the Constitution since his famous address in the same chamber almost a quarter of a century previous, during the debates on the Alien and Sedition Acts of the Adams Administration. Then he was championing the right of individual liberty against encroachment by the national government, holding up the specter of despotic, consolidated government. Now he was pleading for a concept of union that would admit the existence of a nation, able to act unitedly on national questions and not restricted by sectional jealousies. His views had matured; the consolidation he now advocated was not a reversal of his former position but an attempt to delineate state and national powers. In the earlier speech, it is true, he had been driven by the extreme harshness of the laws under discussion to place the determination of constitutionality of acts of Congress in the first instance in the people, a position from which he had now certainly retreated.

The knotty problem of the determination of constitutionality was not specifically resolved in Livingston's internal improvement address, but a logical inference from the argument was that such determination, in the first instance, was a matter for the judiciary. While he may not have contributed to the majority vote of the House on the bill,[34] he did again direct public attention to himself as a polished speaker and a constitutional authority.

Keen political rivalry existed among the presidential aspirants, and the three-cornered fight of Adams, Calhoun, and Crawford began in earnest as early as 1821.

[33] *Ibid.*, 1430–59. [34] *Ibid.*, 1467–68.

No love was lost among them, and, in their efforts to eliminate one another, their actions at times were reprehensible. Crawford knew that Calhoun had attempted to alienate his supporters at the time of Monroe's election; and as the 1824 election approached, there appeared in the Washington *Republican* a series of letters attacking Crawford, which were signed "A. B." The editor of the journal was Calhoun's friend,[35] and the author of the letters, Senator Ninian Edwards of Illinois, was appointed Minister to Mexico, upon Adams's recommendation, shortly after the publication of the letters. Edwards resigned his seat in the Senate, and, while on his way home prior to his departure for Mexico City, forwarded to Clay formal charges of irregularities and misconduct in office against Crawford. While his Mexican appointment was pending, he had denied authorship of the letters; but, in his communication to the Speaker of the House, from Wheeling, Virginia, April 6, 1824, he admitted having written them.[36]

Immediately following Clay's referral of the communication to the House on April 19, Crawford's friends obtained the appointment of a committee to investigate the charges, on which were named Livingston, Webster, Randolph, John Floyd, George W. Owen, John W. Taylor, and Duncan McArthur.[37] A majority of the members were not supporters of Crawford,[38] but an impartial investigation was made despite the accusation of bias and unfairness. The work of the committee proved to be a disagreeable and arduous task; large numbers of depositions were received and numerous witnesses were subpoenaed; and the committee was kept in session from

[35] Lynch, *Fifty Years of Party Warfare*, 288.
[36] *Annals of Congress*, 18 Cong., 1 Sess., 2431–50.
[37] *Ibid.*, 2455.
[38] Lynch, *Fifty Years of Party Warfare*, 288.

April 20 until far into the summer. Jackson, now a publicly avowed presidential candidate, wrote Livingston, July 5, to the effect that he was "happy to learn" his friend was "nearly closing the disagreeable duty assigned to you, as one of the committee." [39] The investigation disclosed that the charges were untrue and when the committee's report was made, its members were unanimous in stating "that nothing, affecting the Secretary, and depending upon the oath of Mr. Edwards, can be taken as proved." [40]

Monroe's second Administration terminated the rule of the so-called "Virginia dynasty" which had furnished the presidents for the past twenty-four consecutive years. This domination of national politics by the Virginia line of presidents had been due to the Virginia–New York alliance which gave to Virginia the presidential and to New York the vice-presidential selection. The main forces of this alliance were the two organizations known as the Richmond Junto and the Albany Regency. The official organ of the Junto was the Richmond *Enquirer,* whose editor, Thomas Ritchie, was one of its members.[41] The Albany *Argus,* edited by one of the members of the Regency, Edwin Croswell, was the publication of the New York organization. The Regency had come into existence during the factional struggles between the followers of DeWitt Clinton and Van Buren; and by 1822 the latter faction, under Van Buren's able leadership, was victorious and its leader the political boss of the state.[42]

[39] Jackson to Livingston, July 5, 1824, in Bassett (ed.), *Correspondence of Andrew Jackson,* III, 261.

[40] *Annals of Congress,* 18 Cong., 1 Sess., 2915.

[41] Charles H. Ambler, *Thomas Ritchie, A Study in Virginia Politics* (Richmond, 1913), 90–91.

[42] Samuel R. Gammon, Jr., *The Presidential Campaign of 1832,* in Johns Hopkins University *Studies in Historical and Political Science,* Ser. XL, No. 1 (Baltimore, 1922), 12.

The presidential campaign of 1824 was an intraparty contest of personalities rather than of principles, that divided the party into several factions. Crawford was favored by the Virginia–New York combination and its leaders placed the stamp of "regular" candidate upon him in the unpopular congressional caucus,[43] at which only 66 senators and representatives out of a total membership of 261 were in attendance.[44] The followers of Clay, Jackson, and Adams in Congress boycotted the meeting as a move to hurt Crawford, and then took up the cry of a few editors and political leaders against the caucus method of naming candidates. The first evidences of the revolt were in the West in 1822 when Clay and Jackson were nominated by their respective legislatures and these nominations were endorsed by other state legislatures. In the East, the supporters of Adams and Calhoun adopted the same policy.

When Jackson's candidacy was first announced, it was not regarded seriously,[45] but this view changed decidedly in 1823–1824 when Jackson sentiment in Pennsylvania became strong.[46] A state convention endorsed the Tennessean, made him the leading candidate, eliminated Calhoun, and paved the way for the future alliance of the South and the West. The hero of New Orleans was a popular and discreet candidate and it appeared that every event contrived to increase his popularity. He was summoned to the executive mansion to receive the congressional medal "for his gallant defense of New Orleans" and took with him his former aide-de-camp Livingston.[47] In the Senate he supported several of the inter-

[43] *Niles' Weekly Register,* XXV (1823–1824), 258.
[44] Washington *Daily National Intelligencer,* February 14, 1824.
[45] Richmond *Enquirer,* July 30, 1822.
[46] *Niles' Weekly Register,* XXV (1823–1824), 167, 194, 242, 258.
[47] Washington *Daily National Intelligencer,* March 17, 1824.

nal improvement bills which passed and while declaring himself in accord with the policy of protection, he asserted that he was in favor of a "judicious" tariff.

Long before the voting began, it was quite evident that there was to be no choice of president by the electors and that the election would be thrown into the House of Representatives where the selection would be made from the three high ranking candidates. Not until the news from Louisiana reached Washington was it known that Clay would be fourth on the list. Jackson secured the entire vote of New Jersey, Pennsylvania, North Carolina, Tennessee, Indiana, and Alabama. Of their electoral votes Illinois gave two, Louisiana three, Maryland seven, and New York one, which brought his total to ninety-nine. Adams was second with eighty-four, Crawford next with forty-one, and Clay last with thirty-seven votes.

Only twice has the House been called upon to elect the president and only two men, Livingston and Randolph, have had the distinction of casting a vote in each of the two elections. In the former election Livingston was a powerful influence and had much to do with the final outcome of the long-drawn-out contest, but in the present situation he had little or no weight. His fight, which had resulted in charges of bargain and compromise,[48] had been made in the Louisiana legislature and he knew that his state delegation would outvote him two to one, yet he remained loyal to Jackson.[49] Clay and Adams had been political enemies for many years, but there was a rapprochement and the former agreed to support Adams over Jackson or Crawford. The House de-

[48] *Niles' Weekly Register,* XXXI (1826–1827), 178, stated, "it is well known that general Jackson received three, and Mr. Adams two of the votes of Louisiana. Was ever there a more clear case of 'bargain and compromise?'"

[49] Washington *Daily National Intelligencer,* February 10, 1825.

cided the contest February 9; Livingston was chosen teller by his colleagues,[50] and contrary to all expectations,[51] Adams received the requisite thirteen votes on the first ballot.[52]

Following Adams's election to the presidency by the House in 1825, the Jackson party found little to oppose in the policies of the new Administration. In 1826 they determined to use the President's proposed plan for participation in the Panama Congress as a rallying point for their attack. Livingston was loyal to the Jackson cause, but he refused to vote against the interest of his people and follow the opposition all the way in its warfare on Adams. He agreed with the President in so far as the Executive had declared that the government should seek to improve the conditions of its citizens and inaugurate a program of internal improvements.[53] In addition, there was a large Latin element in New Orleans that was kindly disposed toward their kinsmen to the south with whom they had commercial intercourse. Consequently, when the fight was made against the appropriation to defray the expenses of the delegates to the Congress on constitutional grounds, Livingston came to the defense of Adams.

On April 12, during the contest that was waged from the fourth to the twenty-second instant, Livingston declared that "when the President was designated by this House, I gave my voice in favor of the candidate who had

[50] *Register of Debates,* 18 Cong., 2 Sess., 526.

[51] Washington *Daily National Intelligencer,* February 10, 1825.

[52] *Register of Debates,* 18 Cong., 2 Sess., 527. For a full treatment of the House contest, see Lynch, *Fifty Years of Party Warfare,* 291–316; Frederick J. Turner, *Rise of the New West, 1819–1829* (New York, 1906), 260–64.

[53] Adams (ed.), *Memoirs of John Quincy Adams,* VII, 77. Adams reported Livingston as saying that "he approved my message to Congress in every part."

the greatest number of electoral votes"; but this "has not influenced my conduct or opinions in relation to the present Chief Magistrate" after he was elected. The President and the Senate had the right to appoint foreign ministers, he continued, and the House could refuse to appropriate but such power should be reserved for dangerous cases. When the effort was made to instruct the delegates, Livingston contended that the House could not annex conditions to an appropriation, for the power to grant or refuse did not include the right to modify the grant. The right of instruction and the mode of conducting the negotiations were as essentially executive powers as was the appointment of the minister. Consequently, for the House to take one of those powers into its hands would be as flagrant a breach of the Constitution as to take the other. "This is not an Utopian project," he pointed out, but, rather it "is the great AMERICAN SYSTEM." It was neither a combination for exclusive privileges nor "a Confederacy for aggression, or even for defence." It was "not a crusade of republicanism against monarchy," but rather "a mutual understanding to promote the principles of freedom in commerce, frankness in negotiation, humanity in war, free intercourse, and the interchange of good offices in peace." While regretting that he differed "from the representation of the other Southern States, with whose opinions, on other points of policy, I generally concur," Livingston's best judgment would not permit him to "yield to their arguments"; for the course he had indicated was "the only one that . . . [could] be pursued with due regard to the distribution of our constitutional powers." [54]

The 1828 presidential election opened in October, 1825, when the Tennessee legislature nominated Jack-

[54] *Register of Debates*, 19 Cong., 1 Sess., 2195–2215.

son and an effort was made to secure the support of Crawford and Van Buren. Livingston became quite friendly with Van Buren and attempted to secure from him a commitment to support Jackson in 1828. Writing from Albany, under the guise of requesting Van Buren's assistance in securing a naval appointment for his brother, Livingston informed the New York Senator of Clinton's determination "to be a candidate for President at the next election." Since he had secured this news from a New York Clintonian, Livingston passed on the information that Clinton wished Van Buren to succeed him as governor, and that if elected president the Little Magician "might have under the General Government" anything he wished.[55] Van Buren replied from Washington, "There is not the remotest probability of my committing myself in the matter at this session. The reasons are obvious and conclusive." Continuing, Van Buren stated that he was certain that Clinton's emissary "was unconscious of the impropriety of his suggestions" and Livingston was requested "not to speak of it to *anyone*. You know what a band of political gossips are apt to make of such things." [56] Whether or not Livingston influenced Van Buren's decision to support the General, which was publicly announced at the close of the session of Congress, he was a most valuable acquisition to the Jackson cause.

In Congress the opposition to the Administration was solidified and by the time that body adjourned in May, 1826, the lines upon which the next campaign was to be fought were clearly drawn. Jackson's plan of battle was carefully organized and ably conducted. His campaign

[55] Livingston to Van Buren, November 30, 1825, in Van Buren Papers (Division of Manuscripts, Library of Congress), VI, 1456.

[56] Van Buren to Livingston, undated (draft in Van Buren's handwriting), *ibid.*, 1458–59.

managers realized that success depended upon the electoral votes of Pennsylvania, New York, and Virginia in addition to those of the South and West. They could count upon the Pennsylvania vote, but those of New York and Virginia were another matter. In Virginia the prejudice against Jackson was almost as strong as the dislike for Adams, and in New York the General had received very little support in 1824. It was apparent that Van Buren's control of the Regency would be re-established and that the renewal of the entente between it and the Junto was essential to the success of the issue. In regaining control of the Regency and renewing the New York–Virginia alliance under his control,[57] Van Buren rendered his most effective service to the Jackson party. Furthermore, he sought to harmonize the Crawford and Calhoun factions in the East from New York to Georgia. To this end, he made an extensive trip from his home to Georgia through Virginia and the Carolinas.[58]

From the close of the 1826 congressional elections until the selection of the president, the campaign raged with unprecedented fury. In this fight, Livingston gave his time and energies unreservedly to promoting the cause of his friend. He neglected his own campaign and, instead of returning to Louisiana in the interest of his 1827 election,[59] he made trips through New York and Pennsylvania to gain firsthand information of the situation and deliver campaign speeches in support of the candidacy of the "Old Hero." In analyzing the situation, this practical politician did not allow preference to influence

[57] Ambler, *Thomas Ritchie,* 105–106, 110–13.

[58] John C. Fitzpatrick (ed.), *The Autobiography of Martin Van Buren,* in American Historical Association, *Annual Report,* 1918, II (Washington, 1920), 169.

[59] Livingston to Jackson, May 21, 1827, in Jackson Papers, Ser. II, Vol. III, 279.

his judgment. His reports revealed clear analyses of conditions with due regard to all the factors affecting the final outcome.

From New York he wrote to Jackson, "Since my last everything confirms the opinion I then expressed as to the Disposition of the State in relation to the approaching election," and "I should not be surprised to find nine-tenths of the Districts would be in your favor." In referring to the "political party" divisions, he stated that the "old republicans or buck-tails" were the most important and "are with us to a man." The hostility between them and the "Clintonians has softened somewhat of its asperity" and many of the most influential "in that party are already arrayed upon our side." The rest must follow because they cannot go with the Federalists as they "are now themselves completely divided." The great body of them retain "the name from a pride of opinion that is perhaps excusable," and call themselves "Washington Federalists." They will never vote for Adams "whom they hate for his Defection." The smaller group or "ultra Federalists" belonged to the "Essex and Hartford Schools" and "are your bitter enemies," but "with them no other party in this state dare openly to combine." He had no doubt that three of the four parties would be in Jackson's favor and "for the fourth, I do not think they can command a single electoral vote in the State."

When approached to learn "what would be the course of your appointments," Livingston informed the inquirers that Jackson's course "would satisfy every friend of the constitution, the wealth of the country and happiness of the country," and that "you yourself had formed no determinations on this subject much less have communicated them." With regard to the Louisiana situation, while he would "not go to New Orleans until Sep-

tember," the reports indicated that "I am, again not to be put to shame by the vote of my state," for "the vote of gratitude will be given by a majority of two-thirds." [60]

In New York one elector was chosen from each of the representative districts and those thus elected chose two additional electors. The selection of the electors was made at different times in the several districts. The election in New York City was held in November, 1827. The results gave Livingston an opportunity to write the General, "I hope you will not attribute the pleasure that I feel at the election in this city to the pride of seeing my predictions fulfilled." Whereas in the spring he had promised Jackson "from one-half to two-thirds of the votes" of the state, he now thought he could count "upon thirty of the thirty-six" districts. Although he had long been absent from the state, he was persuaded that he "knew the republican stuff it was made of well enough to be sure of the course it would pursue" between Jackson and Adams.[61]

On August 13, 1828, Livingston made a speech in favor of Jackson's candidacy at Harrisburg, Pennsylvania, which was enthusiastically received. In his closing remarks, he asserted that the election of the military hero would "establish our honor abroad, insure union and tranquility at home and rescue the principles from defamation." [62]

Jackson's campaign managers considered him a political novice and were constantly worried lest his temper would cause him to say something that would ruin his chances. As soon as it came to Livingston's attention that a pamphlet criticizing the General's wife had "been re-

[60] *Ibid.*

[61] Livingston to Jackson, November 11, 1827, in *ibid.*, 382–83.

[62] Washington *United States Telegraph*, October 11, 1828.

printed here" and was being distributed in great numbers in "franked packages through the United States," he notified his friend. Adroitly he suggested that the contemptible action of Jackson's enemies was for the purpose "of exciting your friends or perhaps yourself" to some overt act of violence "which in the desperate state of affairs they would hope to turn to their advantage." Cleverly and subtly he suggested that as "it would be highly imprudent to give way" to righteous "indignation," Jackson, like his friends in Washington who were on their guard, should "treat it with contempt." Assuming that the General naturally would adopt the same policy, Livingston informed him that the purpose of the communication was to forestall his being "taken by surprise on seeing it again in circulation under the auspices of members of this body." [63]

Important and successful individuals must pay the price of attaining prominence by becoming a target of attack. It was not surprising that an attempt was made to weaken Livingston's influence in the Jackson councils in Louisiana and in the country at large by accusing him of being the personal enemy of Jefferson. He realized the harm this would do him and in order "to refute what I consider as an injurious calumny," he wrote Nicholas P. Trist for a copy of one of Jefferson's letters to him which he had misplaced. "I find," he said, in some of the party papers of the day "that I am assailed as the personal enemy of Mr. Jefferson," and as proof of this charge "is printed" the concluding paragraph of his Batture controversy pamphlet.[64] Fortunately, he knew that Jefferson "kept

[63] Livingston to Jackson, March 7, 1828, in Jackson Papers, Ser. II, Vol. IV, 15.

[64] *Id.* to Nicholas P. Trist, April 13, 1828, in Nicholas P. Trist Papers (Division of Manuscripts, Library of Congress), V, 56, 165.

copies of all of his letters" and thus he was able to refute the charges.[65]

Livingston, although not returning to New Orleans prior to the 1824 presidential canvass, kept in touch with the political situation and continued his active support of Jackson without regard to his own interest. There were the usual shifts in political alignments, but the ones most expensive to the Jackson cause were the defections of Moreau-Lislet and Mazureau. This loss was largely instrumental in defeating Davezac's attempt to forestall Clay's nomination by the legislature.[66] The Adams group was encouraged when it was reported later that "several of the most influential members of the Clay party have expressed their determination to vote for Adams in consequence of the forlorn hope (nationally) of their favorite." This, according to the *Asylum* "will, we think, be likely to induce others of the French members [of the legislature] to adopt the same determination, and in that case we should not be at all surprised were the vote of the State given Mr. Adams entire." [67]

The national election was practically the sole issue in the 1824 state campaign. The gubernatorial candidates were Bernard Marigny, Villeré, and Henry Johnson. Marigny and Villeré divided the French vote; the former

[65] *Id.* to *id.*, May 17, 1828, *ibid.*, 56, 182. Livingston thanked Trist for having complied with his requests and told him that "The injury to me [in the Batture case] was greater than he [Jefferson] foresaw and excited a warmth upon my part which was natural." However, it had been a source of consolation to him that their misunderstandings had been cleared up before Jefferson's death. In 1824 Jefferson wrote Monroe that "Mr. Livingston would now be received at Monticello with as hearty a welcome as he would have been in 1800." Jefferson to Monroe, March 27, 1824, in Ford (ed.), *Works of Thomas Jefferson,* XII, 346.

[66] St. Francisville *Asylum,* March 20, 1824.

[67] *Ibid.,* November 20, 1824.

had the larger following in the city; the latter was the stronger in the rural sections of the state. The Jackson forces made the mistake of dividing their support between the two, which gave Johnson the advantage. The campaign was a bitter one and canards were circulated with telling effect. According to the *Courier,* messengers were sent out all over the state "with saddle-bags full of ready made tickets" to swing the election "to Johnson" and to spread the report that Villeré had withdrawn from the race.[68]

James Brown's resignation from the United States Senate added fuel to the political fires in Louisiana. Immediately, several candidates announced for the position and the Jackson forces supported Livingston for the place. When the two houses of the legislature convened in January, 1824, to elect Brown's successor, the only candidates remaining in the race were Livingston and his former successful congressional opponent, Josiah S. Johnston. The contest was very close, but Johnston was returned the winner by the vote of twenty-nine to twenty-seven.[69]

Davezac became the leader of his brother-in-law's political forces during his absence in Washington and devoted his time and energies to promoting Jackson's candidacy. He neglected his own campaign for re-election to the state legislature to effect plans and arrangements for Jackson precinct, ward, and city-wide meetings, and to keep in close touch with the party leaders throughout the state.[70] For a time it appeared that Livingston would have opposition, but on January 15 the remaining serious contender, J. Peychaud, City Recorder, announced

[68] New Orleans *Louisiana Courier,* June 24, 1824.

[69] *Ibid.,* January 16, 1824; Louisiana *Senate Journal,* 1824 (French ed.), 13.

[70] New Orleans *Louisiana Courier,* June 2, 1824, *et seq.*

through the press that he would "not be a candidate." [71] At the election, the spoils did not go to any single faction. Two anti-Jackson congressmen, H. H. Gurley and W. L. Brent, were returned, Moreau-Lislet was re-elected to the state Senate, and Johnson was elected governor. On the other hand, the Jacksonites returned Livingston, elected four of their six candidates [72] as representatives to the legislature from New Orleans and made such a creditable showing in the state that the results of the election were in doubt until the vote was cast. The *Intelligencer* reported that it had been informed there was no probability of Jackson's carrying Louisiana,[73] and as late as November 20 the *Asylum* predicted that "all five votes will go for Adams." [74] Nevertheless, the legislature, after six ballots, cast its vote, three for Jackson and two for Adams.[75]

The bitterness engendered during one political campaign hardly subsided before another began. With Henry Johnson's resignation from the Senate at the opening of the gubernatorial campaign, it became necessary to elect his successor, and the New Orleans papers mentioned several probable candidates, among whom was Livingston.[76] He refused, however, to allow his name to be presented to the Assembly and D. Bouligny was elected.[77]

[71] *Ibid.*, January 15, 1824. [72] *Ibid.*, July 2, 8, 1824.

[73] Washington *Daily National Intelligencer*, July 13, 1824.

[74] St. Francisville *Asylum*, November 20, 1824.

[75] Washington *Daily National Intelligencer*, December 17, 1824.

[76] "Edward Livingston and Samuel H. Harper Esquires, are spoken of in the New Orleans papers for the Senate of the United States to fill the vacancy occasioned by Mr. Johnson's resignation. One of the French papers recommends Mr. Bouligny, or some other Creole of standing, for the same office." St. Francisville *Asylum*, July 24, 1824.

[77] Louisiana *Senate Journal*, 1825, p. 11. The vote was D. Bouligny 33, Harper 14, and P. Thomas 11.

Two candidates announced against Livingston in the 1826 campaign, but only one of them remained in the race; [78] and as early as May 3 both Livingston and P. E. Foucher carried announcements of their candidacies in the press.[79] While there was considerable excitement in the city over the approaching election, the editor of the *Gazette* was pleased in that "none of that acrimony, which unfortunately is too often manifested . . . is now known among us." [80] On July 3, however, he took the publisher of the *Advertiser* to task for printing an article in which Livingston was maliciously charged with being a public defaulter. In refutation of the charges, the editor carried in the columns of the *Gazette* a copy of George Clinton's complimentary letter to Livingston accepting his resignation as mayor of New York. He contended that although the defamer "affects to believe" that Livingston had "no influence in Congress," yet everyone interested in Louisiana experienced "joy and honest pride" in his Representative. "The public eye," he continued, "has been turned upon this campaign of the nation's rights" which Livingston was waging "and their expectations have not been deceived." [81] The editor denied that there could be any comparison of the two candidates and the correctness of the *Gazette's* forecast was proved by the results of the election, in which Livingston received a majority of 903 votes and lost only one parish in the district.[82]

During the hectic days of the campaign early in 1828, Jackson found an occasion to write Livingston that he was pleased to find "from the public expression of citizens almost every where" that his popularity had greatly in-

[78] New Orleans *Louisiana State Gazette,* June 1, 1826.
[79] *Ibid.,* May 3, 1826, *et seq.* [80] *Ibid.,* June 17, 1826.
[81] *Ibid.,* July 3, 1826.
[82] *Ibid.,* July 11, 1826; New Orleans *Louisiana Courier,* July 14, 1826.

creased in Louisiana "whilst your colleague's has sunk." [83] Livingston realized that his former chief was not accurately informed as to conditions in Louisiana, for he was too astute to be blinded to the situation by complimentary remarks of personal and political friends. He was aware that his prolonged absence from the state made it doubtful as to his return to Washington and had remarked to friends in Philadelphia that his defeat was not to be "at all unexpected." [84] He knew that the Adams faction was strong in New Orleans and "the whole strength of the [Adams] party was in my district, and I was well aware that it would be exercised to the utmost against me." [85]

The Jackson-Adams fight was the main issue of the Louisiana congressional and state campaigns in 1828. Both factions placed complete tickets in the field and the contest became a straight line fight. The Adams people in New Orleans brought out the most popular man in the district, Edward D. White, against Livingston; and the Jackson forces retaliated by running Walter H. Overton and Lafayette Saunders against the other two congressmen, Brent and Gurley.[86] In the effort to gain control of the legislature, each faction placed on its ticket a Creole and an American candidate for governor. The Adams vote was divided between Pierre Derbigny and General Philemon Thomas, and the Jacksonites had the choice of either Bernard Marigny or Thomas Butler.

[83] Jackson to Livingston, January 12, 1828, in Bassett (ed.), *Correspondence of Andrew Jackson,* III, 389.

[84] Philadelphia *Sentinel,* July 30, 1828, quoted in the Washington *United States Telegraph,* July 31, 1828; Livingston to Jackson, August 12, 1828, in Jackson Papers, LXX, 13,011–12.

[85] Livingston to Jackson, August 12, 1828, in Jackson Papers, LXX, 13,011–12.

[86] New Orleans *Argus,* June 4, 1828.

While the election was not concluded until July 7, the campaign was in full swing prior to June 1. Cognizance was taken of the heated Louisiana campaign by the *United States Telegraph* as early as May 27, in predicting the defeat of Gurley and Brent. With regard to the success of the New Orleans congressman, "we are sanguine. Not that we have heard anything from that section which enables us to speak with confidence, but because of the high respect we feel for Mr. Livingston's character, his talents and public services, and his able and successful prosecution of the immediate interests of his constituents." [87] By June 11, however, this Jackson organ carried a communication from a Louisiana subscriber who predicted that the "Jackson electoral ticket will prevail by a handsome majority" and Gurley and Brent probably will be "turned out of Congress. . . . Mr. Livingston will be hard run—not on the Jackson question, but the extraordinary popularity of the individual who opposes him." [88]

As a political forecaster, the final results showed that this correspondent was not far wrong in his prognostications. The first returns indicated a complete Adams victory and it was freely and boastfully claimed that Louisiana's five votes would be cast against the hero of New Orleans.[89] In the city Derbigny received a majority in the four-cornered governor's race and the entire Adams

[87] Washington *United States Telegraph,* May 27, 1828.

[88] *Ibid.,* June 11, 1828.

[89] New Orleans *Argus,* July 12, 1828. The Washington *Daily National Intelligencer,* August 11, 1828, stated, "The overwhelming majority for the Administration in the State of Louisiana is the herald of universal success." The Washington *United States Telegraph,* August 22, 1828, remarked, "As usual, the Adams men began to crow before they were out of the woods. . . . It is laughable to think how the opponents will *rejoice* should Mr. Livingston be sent to the Senate of the United States instead of the House of Representatives."

ticket for the state legislature was elected.[90] Early reports indicated a complete sweep of the Adams ticket both for the state and national legislatures.[91]

Final election returns materially improved the situation for the Jackson party. Although they failed to elect the governor [92] and lost the New Orleans congressman, they secured a majority vote of the General Assembly on a joint ballot,[93] thereby insuring the "Old Hero" the vote of the state, and defeated Brent for Congress. White led Livingston 581 to 557 votes in the city and in the district 1,780 to 1,173 votes. He carried eleven of the twelve parishes with majorities ranging from 3 votes in St. Bernard to 281 in Lafourche Parish. Livingston's majority of 88 in Plaquemines Parish had little effect on White's total majority of 607 votes in the district.[94]

In contrast to a usual campaign, the extreme bitterness engendered by the presidential contest continued after the election. The violently active partisanship of the New Orleans press contributed much to the existing deplorable conditions. While the attempt to continue the relentless warfare was not restricted to any one particular publication, this policy was shown clearly by the election

[90] New Orleans *Louisiana Gazette,* July 10, 1828. The vote was Peter Derbigny 636, Bernard Marigny 288, Thomas Butler 195, and Thomas 16. The highest vote received by a candidate for state legislature on the Adams ticket was 634, the lowest, 576; on Jackson's ticket, the largest vote was 532, the lowest, 502.

[91] *Ibid.,* July 21, 1828. There were seventeen Senate members. Returns from sixteen districts gave Adams 10 and Jackson 6. There were fifty House members. The returns on that date gave Adams 26, Jackson 21, doubtful 1, with the votes from two parishes not reported.

[92] New Orleans *Argus,* July 19, 1828. Returns from all but three voting districts gave Derbigny 3,372, Butler 1,562, Marigny 1,196, and Thomas 1,151. The total Adams vote for governor, 4,523; Jackson total, 2,758.

[93] New Orleans *Louisiana Gazette,* July 26, 1828. [94] *Ibid.*

résumé of the *Argus*. "The success of the Administration party in the recent election in this parish," said the *Argus*, "will correct the overbearing arrogance of the Jackson party and inform the people of our sister states, that, on the theatre of the Hero's glory a majority of the independent citizens have declared that he is *unfit* for the office to which he aspires. . . . To effect a different result, however, our opponents (self-dubbed "The People") stopped at nothing—the judges of the election were first coaxed, and then browbeaten—peaceable citizens were alarmed and threatened both by inflammatory speeches at the polls, and by their mouth Piece [the *Gazette*]; but all to no purpose. . . . Such a triumph in the very hot-bed of Jacksonism speaks volumes for the moral integrity of the People and gives a sure pledge to our country that the Administration has nothing to fear in this quarter." [95]

On the east bank of the Hudson River, near Red Hook, Dutchess County, was located the three-hundred-acre estate of Livingston's eldest sister, Janet Montgomery, that shortly was to pass into his possession. It was here at Montgomery Place, while visiting his sister during her last illness, that Livingston received the news of his defeat and the reputed Adams victory in Louisiana. Although prepared for his own defeat, he was depressed greatly by the ingratitude expressed by the vote of his adopted state for the General. Jackson's kind letter tactfully suggesting that Livingston's defeat was due to his continued absence from the state and the promise to support him for the United States Senate the following year, which came prior to the news of "Old Hickory's" victory in Louisiana,

[95] New Orleans *Argus*, July 12, 1828, quoted in Washington *Daily National Intelligencer*, August 1, 1828.

failed to revive his spirits or reconcile him to the reputed loss of the Louisiana electoral vote.[96]

The tone of his reply revealed clearly the temporary dejection of the sixty-four-year-old man who, again, experienced the ingratitude of a democracy for its public servants. While assuring Jackson that "in this state [New York] I think we may safely count upon twenty-four votes," he expressed mortification that the citizens of Louisiana "more than any others in the Union" had refused to pay the debt they "owed to their deliverer." Though maintaining he had no regret as to his defeat, he was unable to conceal it when he stated that it deprived him "of the satisfaction" he would have had in giving his "support to the wise measures" he was sure Jackson would "propose to the Legislature." Having refused flattering political offers in New York, for he had decided to eschew politics in the future, he would depart for New Orleans at the close of his congressional term and "return again to that obscurity [from] which it would" have been better perhaps if he "had never emerged." [97]

Livingston had forgotten, however, that the man who has played the game of politics, like the man addicted to opiates, finds it impossible to forego the excitement that it gives him. The fascination of the game lures him to return just as the craving leads the addict to indulge, for neither is able to break himself of the habit. Within a short time, his outlook became brighter and before the close of Congress, he had decided to accept Jackson's proffered assistance to gain the senatorial seat.

[96] Jackson to Livingston, August 2, 1828, in Bassett (ed.), *Correspondence of Andrew Jackson,* VI, 500.

[97] Livingston to Jackson, August 12, 1828, in Jackson Papers, LXX, 13,011–12.

Chapter XIII

UNITED STATES SENATOR

THE 1828 campaign slogan of "barter and corruption," the rise of the masses, the blunders of the Adams Administration, and the skillful political manipulation of the practical Van Buren had ended the Virginia-Massachusetts presidential monopoly. For the first time in the history of the nation, a man from beyond the Appalachians had been elected chief executive of the nation. In the broader sense, the election had been a bitter battle between democracy and aristocracy and a keen struggle between the particularism of the South and West and the centralism of the New England President. While Livingston subscribed to many of Adams's political tenets, none of the Jackson followers was more pleased than he with the results of the election. Even though New York had upset his calculations by giving sixteen of its thirty-six electoral votes to Adams, he was highly gratified when Louisiana contributed her five to the Jackson victory of 178 to 83.

Livingston's defeat was "more exulted in by the administration party than any other victory they obtained during the whole controversy," [1] and when "the Adams men began to crow" [2] the Jackson leaders determined to find

[1] Harrisburg *Pennsylvania Reporter,* November 7, 1828, quoted in New Orleans *Louisiana Courier,* December 5, 1828.

[2] Washington *United States Telegraph,* August 27, 1828.

a suitable position for Livingston. His services to the party in New York and in Pennsylvania during the campaign had been too valuable for them to ignore. It was decided that Livingston should become their candidate for the Senate at the following January election, for with the Jackson forces in control of the Louisiana legislature, he should have little difficulty in being elected. The decision having been reached, Livingston notified his friends in New Orleans of his intentions and departed for home during the first days of November.

Livingston knew that his political future was at stake and directed his full energy to a successful conclusion of the issue. In "his anxiety to reach New Orleans as early as possible" he declined an invitation to a public dinner to be given in his honor at Harrisburg.[3] He realized his presence at home was imperative. The campaign plan was an almost perfect "build-up" culminating in a testimonial dinner just prior to the election. The publicity was admirable and effective. Interestingly written and well-timed accounts of the honors bestowed upon him at the various stops en route home, prepared to impress the people of New Orleans with the high regard in which he was held elsewhere by the Jackson people, appeared in the *Courier*.

Apparently by design, the account of his reception in Nashville appeared in the paper on the day of his arrival home. The editor of the *Courier* gave considerable prominence to the detailed account of the Tennessee "correspondent's" story of the keen disappointment of Felix Grundy and numerous "other friends of Jackson" when Livingston found it necessary to decline their invitation to attend a public dinner. They particularly regretted

[3] Harrisburg *Pennsylvania Reporter*, November 7, 1828, quoted in New Orleans *Louisiana Courier*, December 5, 1828.

being unable to pay him their "tribute of esteem and respect" as the "zeal and ability with which on all proper occasions" he had "stood forth as the able and eloquent defender of our much slandered fellow citizen" had endeared him "to the citizens of Tennessee." Especially were they disappointed that their "fellow citizens" would be denied the privilege of meeting this "firm, undeviating, talented and distinguished member of the Republican party" who possessed "deep and extensive learning" and whose reputation had few equals "in the whole Union." [4]

On December 9 the *Courier* announced "with pleasure the arrival here last evening of the Honorable Edward Livingston" and that his friends were planning to have a public dinner for him as a testimonial of gratitude.[5] The numerous press notices gave fullest publicity to the contemplated affair,[6] and James Workman, D. Prieur, mayor of the city, and John Slidell,[7] working untiringly for the success of the occasion, furnished a fitting climax to the publicity program by inserting in the *Courier* copies of the invitation and of his acceptance.[8]

The "highly respectable company" which attended the honorary dinner at the Davis ballroom provided Livingston a means of advancing his candidacy. His political sagacity was shown in his speech by the scrupulous avoidance of any direct reference to the campaign. Following the usual complimentary remarks paid a successful opponent, Livingston subtly appealed to the pride and patriotism of his audience in justifying his vote to add to the burden of taxation by the raid on the treasury for

[4] New Orleans *Louisiana Courier*, December 8, 1828. The article carried a Nashville lead dated November 24, 1828.

[5] *Ibid.*, December 9, 1828.

[6] *Ibid.*, December 10, 1828, *et seq.*

[7] *Ibid.*, December 11, 1828.

[8] *Ibid.*, December 18, 1828.

the Revolutionary War veterans, assuring them that he knew he would "not be disavowed when I preferred your reputation and honor to your pecuniary interest."

In rendering an account of his stewardship, he declared that he did not undervalue the honor he had derived from their confidence or "conceal the regret" at its being withdrawn. "I bow with respect to the decision of the majority," he continued, and "shall return to private life with the consciousness of having performed" my duties "to the best of my ability." If he were inclined to "utter a word of complaint or shew any surprise at its result" it would have been a disavowal of those principles which he had asserted and practiced during his "whole political life." [9] Adroitly he announced his platform during his discussion of the national issues. His analytical, comprehensive résumé of the national problems was, in effect, a statement of his position on the various controversial questions and a bid for support. In a tribute to democracy, he closed his address with a toast to "The Will of the People—generally directed to their best interests—always to be submitted to with respect—never to be contravened with impunity." [10]

The tide was flowing strongly in his favor, as was clearly indicated by the result of an election January 2, 1829, when by a majority of sixty-five votes a Jackson

[9] As proof of this assertion he quoted from a report which he had made to the General Assembly when a member of that body. "The representatives of a free people, although they may do nothing to forfeit the confidence of their constituents, cannot always expect to retain the power of serving them. A spirit of change is inherent in our government. It gives it energy and is necessary to its existence. We appear in public life, perform or neglect the duties assigned to us, and then pushed off the stage by younger, more active, or more popular candidates, we return to the mass of our fellow citizens; in common with them to suffer the evils or enjoy the benefits of the measures we have adopted." *Ibid.*

[10] *Ibid.*, December 28, 1828.

candidate was elected to fill a vacancy in the legislature.[11] When the legislature met to elect a senator, January 12, 1829, five candidates were in the race; but after the first ballot, it became a three-cornered contest. Henry Johnson, who had resigned the senatorship to serve as governor, desired to return to Washington. Bouligny, who had been selected to serve the remainder of Johnson's unexpired term, contended that he was due a full six-year term of office. Thomas Butler and James Bowie each felt that he was best fitted to represent the state, and Livingston strenuously opposed the effort to remove his name from the Federal payroll. On the first ballot Livingston took the lead and increased it on each successive ballot until the fifth when he secured the necessary majority for election.[12]

The Jackson men in Louisiana now boasted that Livingston had "proved too strong for the Adams men" and that their state again had "frustrated the designs of the coalition by electing a firm republican to the United States Senate." [13] An intense partisan triumphantly informed the *Telegraph,* "I am just from the House and hasten to inform you of another triumph: Livingston has carried the day." With pride he related, "I have just shaken hands with the old fellow—he is in fine health, and I need not add, in excellent spirits." [14] The opposition press refrained from any comment and the *Bee* carried without remarks the official proceedings of the

[11] "H. A. Lavergne defeated J. J. Mercier by 65 votes." New Orleans *Bee,* January 3, 1829.

[12] New Orleans *Louisiana Courier,* January 12, 1829; Louisiana *Senate Journal,* 1829 (French ed.), 51-52. The vote stood: Livingston 32, Bouligny 12, Johnson 15, blank 3.

[13] "Extract of a letter from a citizen of New Orleans to a gentleman in this city," in Washington *United States Telegraph,* February 3, 1829.

[14] *Ibid.*

General Assembly.[15] To the editor of the *Bee,* Livingston's election was a galling climax of the Jackson campaign, as this editor had lost to the editor of the *Courier* a $5,500 wager on the outcome of the presidential election in the state.[16] For Livingston there remained hardly any political ambition to be satisfied. He became senator on the same day that Jackson took the oath of office as president; and from the standpoint of tenure, prestige, and importance, he held one of the most desirable political offices.

Even before Jackson's inauguration there had begun a struggle for supremacy in Democratic Republican ranks between the Calhoun partisans and the western group over the cabinet personnel that later divided the party and contributed to the rise of the Whigs. In the formation of his cabinet, Jackson was guided by the two principles of barring all adherents of Clay and of surrounding himself with men who would not oppose him. However, he did exercise the wisdom of selecting his cabinet members from the leaders of the principal factions which had supported him. The Crawford element was recognized by the appointment of its former leader, Van Buren, as secretary of state. From the West he drew two personal friends: John H. Eaton of Tennessee was assigned the position of secretary of war; and a little later William T. Barry of Kentucky became the postmaster general. The cabinet was completed by the appointment of Samuel D. Ingham of Pennsylvania as secretary of the treasury; John Branch of North Carolina as secretary of

[15] New Orleans *Bee,* January 13, 1829.

[16] *Ibid.,* October 8, 1828. The *Bee* stated, "The bet of $5,500 on the presidential question, proposed by the *Courier,* was immediately accepted and the money staked on both sides."

the navy; and John M. Berrien of Georgia as attorney general.[17]

Probably feeling that Livingston resented not having been included in the cabinet selections and recognizing his peculiar fitness for the French mission, Jackson offered this position to him shortly after Congress adjourned. Nothing more desirable could have been offered Livingston than this opportunity of realizing his cherished ambition of becoming acquainted with the world's savants in the fields of art and science at Paris. The distinction of occupying the same position once held by his distinguished brother not only appealed to him, but he was gratified with "the mark of high confidence which" Jackson reposed in him "by the offer." [18] Livingston, however, had to consider several factors before his final answer could be given to Jackson. It was not, as Van Buren thought after his "long and gloomy interview" with the Livingstons, a question of the crudeness of Washington official society which might expose them "to annoyances at a foreign court," [19] but rather a question of finances which caused Livingston's delay in reaching a decision.[20] He had not and did not draw his salary from the government prior to settling his account with the Treasury Department. His living expenses were heavy, and, to supplement his private in-

[17] The traditional view is that Ingham, Branch, and Berrien were "Calhounite" members of the cabinet. Ingham, it is true, was a friend and supporter of Calhoun; Branch could hardly be called a political ally; Berrien was certainly not an adherent of Calhoun. See Thomas P. Govan, "John M. Berrien and the Administration of Andrew Jackson," in *Journal of Southern History*, V (1939), 447–67.

[18] Livingston to Jackson, May 3, 1829, in Van Buren Papers, IX, 2102.

[19] Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 229.

[20] Jackson to Van Buren, April 20, 1829, in Van Buren Papers, IX, 2046.

come, he had continued his practice of law;[21] in fact, at that particular time he had a case before the Supreme Court that was "of great consequence to others" as well as to himself.[22] It had been his policy to invest heavily in real estate and he had very little, if any, ready cash available. The social requirements of the French court made it necessary that the small salary allowed by the government be supplemented by private funds, if, indeed, the minister were to remain out of debt and to retain "that independence which every man in such a station ought to feel."[23]

In an effort to make the necessary financial arrangements, Livingston delayed his decision so long that on April 6 Van Buren notified him that he had been "directed by the President to inform you that he is very desirous that you come to an early decision upon the offer."[24] Being loath to decline the post, he requested Jackson personally for an additional three weeks to arrange his affairs if possible in order that he might accept. Realizing Jackson's impatience and his inability to conclude his negotiations, he notified the President on May 3 that he was "forced with great reluctance . . . to decline the appointment."[25] Then, with his wife and daughter, he remained at Montgomery Place until Congress convened in December.

Livingston's studies and agricultural experiments failed to occupy his time completely, as politics could not be forgotten for very long. The Jackson policy of removing Federal officers had greatly disturbed the Al-

[21] Washington *United States Telegraph,* January 24, 1824.
[22] Livingston to Jackson, May 3, 1829, in Van Buren Papers, IX, 2102.
[23] *Ibid.* [24] Van Buren to Livingston, April 6, 1829, *ibid.,* VIII, 2003.
[25] Livingston to Jackson, May 3, 1829, *ibid.,* IX, 2102.

bany postmaster, a certain Van Rensselaer, who was a distant relative of Livingston's. He appealed to his kinsman for aid, and within a short time Livingston was able to assure him that the President had stated "he would not be disturbed." [26] As the dispenser of Federal patronage in Louisiana, Livingston recommended for appointment "strong all-time supporters of Jackson" for the important positions,[27] and made a recommendation to Van Buren with regard to the award of the contract for the "public printing at New Orleans." Failing to receive prompt compliance with his request, he inquired of the Secretary whether attention had been given "to that affair," and assured him that although it might seem of little importance it would have a "beneficial effect, to make that appointment without delay." [28]

Livingston's political interest was not confined to the patronage problems of New York and Louisiana. He kept fully informed concerning the important events in the political world and watched with keen interest the attempt of Clay to consolidate the various elements of the opposition in his efforts to form a permanent political party. He thoroughly enjoyed Clay's speeches as "preachings over bottles, sometimes let the hearers into secrets." He was delighted with the mistakes which this ambitious leader made and relished the fact that he had placed himself in an untenable position during his "Mount Sterling Speech" which had left him in "the Dilemma between the American System, and the breach of the Union." He was thoroughly convinced that the

[26] Bonney, *Historical Gleanings*, I, 485–86.

[27] Washington *United States Telegraph*, April 28, 1829. Presidential appointments in Louisiana are listed.

[28] Livingston to Van Buren, September 16, 1829, in Van Buren Papers, X, 2356.

former Secretary of State was "speaking away every chance he had of success." [29]

In 1826 there had been organized a crusade against the Masonic Order, and the leaders had made a political issue of their fight against the society which resulted in the formation of the Antimasonic party.[30] In New York it had been instrumental in the choice of the sixteen Adams electoral votes in 1828,[31] and its strength lay in the East where Jackson was weakest. It was difficult to calculate how widespread the movement would become and what dangerous proportions it would reach. Jackson was a Mason, as was his outstanding opponent Clay, but the latter refused to discuss the question. Jackson, on the other hand, with his usual directness, later denounced the Antimasons and turned the fight to his advantage. In the fall of 1829, Livingston, who had long been a member of the order, was "offered the Presiding office over the Royal Arch Masons throughout the Union."

In view of the political complications, he was careful to consider fully what effect his acceptance would have upon the new Administration. Not wishing to be guilty of the fault he ascribed to Clay, he requested Van Buren to "let me know what you think of it," as he was eager to accept the position if "it may increase my means of being useful." [32] The reply, evidently, was favorable, for on April 3, 1830, he was installed "General Grand High Priest of the General Royal Arch Chapter of the United States" during the organization's national convention in Washington. Following his installation, he delivered an

[29] *Ibid.*

[30] Hammond, *History of Political Parties in the State of New York*, II, 369–84.

[31] *Ibid.*, 385–91.

[32] Livingston to Van Buren, September 16, 1829, in Van Buren Papers, X, 2356.

effective address to the "large assembly of the Brotherhood from different parts of the Union." [33] The Jackson press took its cue from this incident and waged such unrelenting warfare against the Antimasonic party that Clay finally abandoned his neutral position in an effort to secure the support of its members in the 1832 election.[34]

Clay began to denounce the Administration as soon as he recovered from the shock of Adams's defeat. Before leaving Washington he began to organize and solidify a bitter and unrelenting opposition to Jackson. The first objective was to secure a majority in the Senate and thereby control the President. The cabinet selections were greeted with derision, and the President's policy of political proscription served as a rallying point for the opposition. Practically every political aspirant claimed the honor of electing Jackson and each claimant demanded a reward. From the exigencies of this situation developed the spoils system which proved to be the sector on which occurred the first real skirmish of the eight-year conflict. Office seekers importuned the assistance of every individual who was supposed to possess any political influence. To the pleas, threats, and curses of the applicants were added the wails of those who had been displaced. Jackson was accused of duplicity and the cabinet members were called liars. The great din and fury muffled the statements that many who had lost their positions were criminals [35] and that fewer persons had been discharged than was currently reported.

[33] Washington *Daily National Intelligencer,* April 5, 22, 1830.

[34] For the party's participation in the election of 1832, see Charles McCarthy, "The Antimasonic Party: A Study of Political Antimasonry in the United States," in American Historical Association, *Annual Report,* 1902, I (Washington, 1903), 442–54.

[35] Bowers, *Party Battles of the Jackson Period,* 75.

During the summer Jackson made many recess appointments, among which were those of a number of newspaper editors who had actively supported him during the campaign. His enemies were anxiously waiting for the first opportunity to denounce the wholesale dismissals and to humiliate him by rejecting his nominations. The earlier part of the short session which convened in December, 1830, was given over to denunciations of the removals in the House, and to hostile scrutiny of the list of nominations requiring confirmation in the Senate. With Clay absent, the leader of the first onslaught in the Senate was John Tyler whose hostility to Jackson was first manifested by his support of the resolution censuring the General for his actions in Florida. The spoils system served as a pretext for Tyler's opposition to the Administration, and he was delighted with the opportunity to affront and humiliate Jackson by defeating the confirmation of several of the editors.

Livingston supported Jackson actively and vigorously on most matters, but he refused to follow his leadership where the question of principle or of conduct was involved. He was not opposed to the policy of proscription, and in one of his last official acts as Senator, he defended the President for removal of certain postmasters. In their attempt to center public attention on the evils of the spoils system, the opposition had planned a thorough investigation of the Post Office Department. Livingston led the fight to restrict the committee's authority by prohibiting it to "make inquiry into the reasons which have induced the Postmaster General to make any removals of his deputies." [36] He had voted with the minority to confirm the appointment of all of the editors

[36] *Register of Debates*, 21 Cong., 2 Sess., 194–97.

recommended by Jackson, with the exception of Henry Lee. Lee's reputation was so unsavory that Livingston refused to approve his appointment, even though Lee was a personal friend of the President.[37]

Livingston's "failing" memory did not save him from embarrassment arising from an event in his life which he had hoped was a closed chapter. Jefferson's *Memoirs,* which had just been published, quoted him as having informed the former President during the Jefferson-Burr contest that Bayard, by the offer of "the Secretaryship of the Navy," had attempted to win the support of Samuel Smith for Burr. In an effort to clear Bayard's reputation, John M. Clayton of Delaware requested both Smith and Livingston "to disprove the statement." Smith vigorously denied the accusation but Livingston begged the question by replying that "he must say, that, having taxed his recollection as far as it could go, on so remote a transaction, he had no remembrance of it." [38]

During Livingston's two years in the Senate his participation in the debates was restricted largely to subjects in which questions of constitutionality were involved. His remarks with regard to the bill to appropriate public lands for the support of "Deaf & Dumb Institutions" were typical of his position. He opposed the bill on the constitutional grounds that public lands were "intended for the benefit of all—for the common benefit." No provision had been made for this particular purpose, he argued, and should the principle be adopted it would serve as a precedent which would result in the acceptance of the "doctrines of general construction." This act would lead to the consolidation of the powers "of the

[37] Parton, *Life of Andrew Jackson,* III, 274.

[38] *Register of Debates,* 21 Cong., 1 Sess., 94.

State Governments" in the national government, and the next step would "be to monarchy: for consolidation and monarchy are inseparable." [39]

Livingston was quick to challenge any implication which reflected upon the ability or the reputation of members of his family. On March 2, 1831, during the consideration of a bill for the relief of Monroe, he repeated substantially what he had said during the debate on the same bill while a member of the House. Monroe's friends claimed that the payment of the French "debts due our citizens" and the purchase of Louisiana were the result of Monroe's "exertions and diplomatic skill." Livingston, though favorable to the bill, promptly refuted the statements. He pointed out that his brother, Robert R., had used his "personal influence with the First Consul" to secure a settlement of the American claims a month prior to Monroe's arrival in France. Furthermore, he asserted that Talleyrand had opened negotiations with his brother for the sale of Louisiana before Monroe reached Paris. On the "authority of the First Consul," Talleyrand had made to Robert R. the definite offer to sell Louisiana before Monroe had presented his credentials. His only participation in the negotiations had been restricted to the discussions relative to the sale price of the territory.

The "numerous and heavy calls on the government for aid in works of internal improvement" alarmed Livingston; and as "one of the most devoted friends of the system," he sought to prevent it from "fall[ing] into disrepute." He recognized that should the government attempt to participate in the financing of all projects the system would be destroyed as the Treasury would be unable to meet all the demands. His motion to restrict

[39] *Ibid.*, 302–304.

the payment of stock subscribed by the national government in the Baltimore and Ohio Railroad project to funds derived from "a transfer of the sales of other stocks, invested in similar projects," obtained the desired results. The discussion that followed Livingston's motion resulted in tabling the original question by a vote of twenty-one to nineteen.[40]

Whereas Livingston had uniformly favored the program of internal improvements, Jackson's position on the question had been no more clearly defined and consistent than it had been with regard to state rights. It was expected that the President, a western man, would favor the program but his state rights theories disturbed him and tended to influence him against such a policy. By 1830, when Congress passed the Maysville Road bill, Jackson was definitely committed against the question. Over the protest of many of his best friends, Jackson returned the bill to the House, May 27, with his veto.[41] Despite the President's attitude, Livingston refused to reverse his position on the question,[42] and not only voted favorably on all internal improvement bills, but on several occasions urged the Senate to take favorable action on them.[43] On May 31, he voted to override the President's veto of the Washington Turnpike Road Company bill, but the attempt failed to secure the necessary two-thirds majority.[44]

The Maysville veto caused the Southerners generally to believe that Jackson was committed definitely to strict construction principles. This belief was strengthened by his action in the Georgia-Indian dispute when he ignored the decision of the United States Supreme Court,

[40] *Ibid.*, 453, 455.
[41] *Ibid.*, Appendix, 133–42.
[42] *Ibid.*, 456.
[43] *Ibid.*, 30, 247–72, 341–42, 343.
[44] *Ibid.*, 456. The vote was 21 to 17 in favor of its passage.

refused to protect the Indians, and allowed Georgia to subject them to the laws of the state in violation of the terms of the treaty between the Indians and the United States.

This controversy over the respective powers of the central government and the states was an old issue antedating the Revolution itself. One of the most dangerous factors during the Colonial period was the determination of the proper line of demarcation of authority between the home government and the colony. Following the independence of the colonies, a similar question arose again and again, in the Kentucky and Virginia Resolutions, and in the actions of the dissatisfied New England Federalists. The jealousy of any power superior to the states had been further aroused by the internal improvements question and the Georgia-Indian dispute. These, however, were hardly more than skirmishes in the great conflict over the nature of the Union. Livingston gave direction to its course by his masterful interpretation of the rights of the states and the power of the central government as provided by the Constitution.

The genesis of the battle was in the economic situation that existed following the War of 1812. The South, although accepting the theory of protective tariff in 1816, maintained that the inequality of the tariff had built up the North at the expense of those sections without manufactures. The tariff bill of 1820, providing for a general increase in most duties designed to relieve the economic situation resulting from the panic of 1819, had been defeated in the Senate by one vote. The protectionists, by granting concessions to Kentucky and the Northwest, were successful in securing the compromise bill of 1824. As a result of Vice-President Calhoun's deciding vote in the Senate, the woolens bill of 1827 was defeated.

The 1828 tariff bill was an effort to meet a political situation, but it was also an attempt to deal with an economic problem.[45] The issue was not drawn between the Administration and the opposition. The Jackson party controlled the House which assembled in December, 1827, but both camps were badly divided on the tariff question. The fight was rather between friends and opponents of protection, regardless of party affiliation. Antitariff men prepared in committee a bill that would be satisfactory to the middle states, yet so objectionable to New England that it would secure its defeat. To the dismay of the manipulators, a sufficient number of New Englanders voted with the tariff men of the middle and northwestern states to pass the "tariff of abominations."

Business depression, by 1828, had caused the southern planters to oppose the tariff more violently, as they attributed the hard times almost exclusively to high duties. Calhoun was "deeply moved on the subject" and, following the passage of the "tariff of abominations," he discussed the problem with Van Buren on numerous occasions. During these conversations, the New Yorker sensed that the Vice-President was "brooding over some energetic movement by which the then course of action might be arrested." [46] On Calhoun's return home following the adjournment of Congress, this "energetic movement" found expression in a plan to oppose the tariff, which he prepared at the request of the state rights party. In this document, that came to be known as the "South Carolina Exposition," was enunciated for the first time

[45] For the tariff of 1828, see Lynch, *Fifty Years of Party Warfare*, 340–44; Frank W. Taussig, *The Tariff History of the United States* (New York, 1923), Chap. II.

[46] Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 409.

the doctrine of nullification in a concrete, systematic form. With Calhoun, nullification became more than a protest; it became a plan of action. The state legislature, which met in December, 1828, considered the "Exposition"; but, at the suggestion of its author, whose identity at that time was suspected but not known, action was deferred until Jackson had had the opportunity to act on the question.

Jackson had given little comfort to the antitariff people of the South, and, by the spring of 1830, Calhoun was committed publicly to state rights and his doctrine of nullification was in danger of becoming the slogan of the South. He had concluded that his only practical chance for the succession depended upon the overthrow of the power which "he had been instrumental in bringing into existence." [47] It was this conclusion that "perhaps controlled his action at the moment." [48] Realizing that as Vice-President he could not assume actual and public leadership of the nullifiers, he assigned this role to Robert Y. Hayne.

The Calhoun-Hayne group waged a systematic campaign to gain the support of Virginia, Georgia, Pennsylvania, and certain sections of the Northwest. In order to arouse the support and enthusiasm of Virginia, pointed effort was made to pay tribute to the memory and services of Jefferson on every possible occasion. To gain the aid of Georgia, attempt was made to capitalize the Indian controversy and to laud her public men for their wisdom and eloquence.[49] In Pennsylvania, Calhoun's friends worked secretly to undermine the President by developing sentiment to limit him to one term.[50] They sought

[47] *Ibid.*, 410. [48] *Ibid.* [49] *Ibid.*, 414.

[50] Parton, *Life of Andrew Jackson*, III, 296–99; Gammon, *Presidential Campaign of 1832*, p. 79.

to form an alliance with the groups in the West opposed to the Maysville veto. Calhoun awaited a propitious occasion to launch the attack; and, in the meanwhile, an unexpected incident, unrelated to the question, occurred that led to the opening of the momentous conflict that continued for more than a quarter of a century, culminating in civil war.

Late in December, 1829, Senator Samuel A. Foot of Connecticut introduced a resolution in Congress designed to restrict the sale of public lands.[51] The proposal raised a point on which the interests of the Northeast and the West were at variance, and the western senators objected immediately. The impending breach between the Northeast and the West gave the state rights advocates an opportunity to draw the West to their side by showing that the two sections were suffering equally at the hands of a common enemy. Much feeling was aroused in the Senate, and during the thirty-four days devoted to the debates on the question in the period December 29, 1829, to May 21, 1830, twenty-two senators spoke to the resolution on fifty-eight occasions. Within a short time the debates shifted from the question of public lands and the West to the proper status of the Federal government.

When Hayne first spoke to the resolution, January 19, 1830, the Jackson people felt that he had championed the Administration cause in a party battle. At the moment, Jackson was friendly to Hayne [52] and he viewed the arraignment of Clay's American System [53] and the strong indictment of Webster's manufacturing interests [54] as an attack on New England Federalism designed to cap-

[51] *Register of Debates,* 21 Cong., 1 Sess., 3.
[52] Parton, *Life of Andrew Jackson,* III, 282.
[53] *Register of Debates,* 21 Cong., 1 Sess., 34.
[54] *Ibid.*

ture that section for the Administration.[55] The skill with which Hayne linked with the issue in question his protest against a protective tariff and with which he hinted at a constitutional method for a state to undo an unauthorized act of oppression at the hand of the Federal congress did not deceive Webster as to his ultimate goal. When Hayne stated, "I am one of those who believe that the very life of our system is the independence of the States, and that there is no evil more to be deprecated than the consolidation of this Government," [56] Webster boldly challenged the theory for the purpose of forcing Hayne to a more specific declaration of his meaning.[57]

The challenge was accepted. In his speech of January 21, following an attack on Webster's inconsistency on the tariff question and New England Federalism for its stand during the War of 1812, Hayne raised the whole question of nationalism by pointing out the dangers of consolidation and the unfairness of the tariff, basing his arguments on the "Exposition." He showed that it was in line with the Virginia and Kentucky Resolutions of 1798 and it was the traditional American doctrine espoused by New England under the Madison Administration during the War of 1812. He maintained that, as for South Carolina, she attempted only to protect herself from measures which had prostrated her and which soon would impoverish the whole South; she sought to preserve the union of states as it was founded; and she endeavored to save the states from usurpations which would leave them nothing they could call their own.[58]

[55] Bowers, *Party Battles of the Jackson Period*, 93.

[56] *Register of Debates*, 21 Cong., 1 Sess., 34.

[57] *Ibid.*, 35–41. For the Webster-Hayne debate, see Frederic Bancroft, *Calhoun and the South Carolina Nullification Movement* (Baltimore, 1928), Chap. V.

[58] *Register of Debates*, 21 Cong., 1 Sess., 43–58.

On January 26 Webster replied to Hayne. Following a defense of the war policy of the Federalists, his own inconsistencies, and the attitude of New England toward the West, he directed his attack against the constitutional arguments of the South Carolinian. While accepting the consolidation theory, he denied the ultimate authority of the states to pass judgment upon acts of Congress and decide upon their constitutionality, for there was no middle ground between obedience and open rebellion. Both the Federal and state governments, he maintained, were the agents of the people where true sovereignty lay. The Federal government, he argued, was the people's government, as from them it derived its authority and was supreme in its sphere. The state legislatures were not the sovereign people, he continued, for the people had chosen to place that sovereignty in the Federal power. Consequently, the Constitution had restricted the rights of the states and no state of its own accord could revoke those rights. He pointed out that the Supreme Court was the proper tribunal to settle differences of opinion arising over Federal acts, and that if the people disapproved of any constitutional provision they could amend that instrument. Until the Constitution was amended, however, acts of Congress, passed in conformity with the authority delegated to it, remained the supreme law of the land.[59]

This powerful attack on Hayne's thesis is all the more remarkable in that, prior to 1828, Webster had been an avowed sectionalist. The question as to the source of his recently acquired nationalistic philosophy arises, and it is interesting to note the striking parallelism that exists between the principles he enunciated during the debates and the tenets long held by Livingston. A corollary of

[59] *Ibid.*, 58–93.

every important point advanced by Webster is to be found in the arguments presented by Livingston during the House debates of 1798 and 1824. Webster was a member of the House in 1824 when Livingston clearly, concisely, and logically traced the development of the Federal government and reiterated his nationalistic concept. Livingston had maintained a consistent position with regard to the status of the Federal government and his clear-cut arguments could not have failed to appeal to the logical Webster during his transition from an advocate of state rights to an intense partisan of nationalism.

Jackson soon began to realize the purport of Hayne's speech, and measures were taken to counteract its effects. As the personal friend of the President and one of the Administration leaders in the Senate, Livingston's participation in the debate at this particular time was significant. It was he, rather than Hayne, who expressed the views of the Administration; and, other than Webster and Hayne, he gave utterance, on March 15, to the most forceful and powerful speech delivered during the prolonged discussion. As the official spokesman for the Administration, he vigorously defended the policies of Jackson; and, in the development of his thesis, he differed from every Senator who preceded him. While inclined to Webster, he sustained Hayne in his contention that the Constitution was a "compact of each one with the whole," thereby putting himself at issue with Webster; and in his attack on Federalism, he defended the Union against the insidious doctrine of nullification.

In his exposition,[60] Livingston followed the views expressed in arguments he had advanced during the debates on internal improvements in the House; but now, his position on the determination of the constitutionality of

[60] *Ibid.*, 247–72.

acts of Congress and the power of a state to veto such acts was made much clearer. A more elaborate attempt was made to explain the question of sovereignty—where final authority lay, with the people, the states, or the Supreme Court. Ultimate authority, said Livingston, resided in the people and before the formation of the Union this sovereignty was expressed through the agency of the states. But the states in adopting the Constitution had surrendered part of their sovereignty to the national government and this surrender, having constituted a government of general powers, which existed for the common good, was irrevocable. Among the powers thus surrendered by the states was that of impeding or resisting the execution of any decree or judgment of the Supreme Court in cases in which the Constitution gave the Court jurisdiction, even though the states considered such decree or judgment unconstitutional.[61]

There were, asserted Livingston, five remedies open to a state when it believed that a law was palpably unconstitutional even though the Supreme Court had affirmed it.[62] Such a situation might be met, he said, by a remonstrance to Congress against the alleged wrong; an address to the people in their elective functions to change or instruct their representatives; a similar address to the other states, in which they would have a right to declare that they considered the act unconstitutional and void; an amendment of the Constitution in the manner provided therein; and, finally, a resort to "the natural right which every people have to resist extreme oppression." All of these remedies, he continued, were constitutional except the last, and that one, as well as withdrawal from the Union, could "be justified only on the supposition that the constitution has been broken." Whenever a state

[61] *Ibid.*, 270. [62] *Ibid.*

resorted to such action, he warned, it was at the "risk of all the penalties attached to an unsuccessful resistance to established authority."

The states also had surrendered their authority to veto an alleged unconstitutional act of Congress. It would, he pointed out, have been absolutely destructive of union if such power had not been surrendered by the states. Furthermore, it was specifically shown by the Constitution itself, by contemporaneous expression, and by the true construction of the Virginia resolutions of 1798, that the states had surrendered this power. But, he maintained, the surrender of these and other powers on the part of the states had not resulted in a loss of all sovereignty by the states. On the other hand, he held that an acceptance of the Federalist theory of the general government being "founded, in no degree, on compact between the States" would produce "the most disastrous practical results" of placing three fourths of the states at the mercy of one fourth. An admission of this pernicious doctrine, Livingston contended, would lead to a consolidated government finally resulting in a monarchy; and, if partially admitted, it would terminate in civil dissension.[63]

While admitting the right of revolution, Livingston was greatly disturbed by the turmoil between the sections raging under the guise of constitutional construction. He pleaded for a construction of the Constitution that would preserve both the states and the nation by an adjustment of the conflicting opinions and interests within the framework of that instrument. In concluding his entreaty, he warned the "partisans on either side of this argument" that the people will neither submit to consolidation nor suffer disunion, as their good sense would

[63] *Ibid.*

detect "the fallacy of arguments which lead to either." [64]

While the debate failed to settle the question, Livingston's "able and interesting argument" received widespread attention. He was particularly pleased with Madison's approval of his interpretation of the Virginia proceedings of 1798. Not only was the former President's letter of commendation gratifying but it was also a timely attack on the nullifiers, which the Jacksonians used effectively.[65] The "Father of the Constitution" had fortified their position by holding that Livingston had succeeded better in his interpretation of the Virginia proceedings than had those who "had seen in them a coincidence with the nullifying doctrines so called." It weakened the Hayne cause generally and especially in Virginia, when Madison declared that the doctrine was new to him and it had derived no contemporary support at the time of the adoption of the Constitution. The error in the late comments, he stated, had arisen from the failure to distinguish "between what is declaratory of opinion, and what is *ipso facto* executory."

The kaleidoscopic movements of the year following the great debate were momentous, and proved to be important to Livingston. Less than a month after the debate an occurrence set in motion a chain of events that materially influenced Livingston's future political career.

The effort of the nullifiers to gain universal support of their doctrine in the South had not been successful. Their play to Virginia was not meeting with the desired response, and although Jackson was generally supposed to lean toward state rights, the maneuvers of Calhoun

[64] *Ibid.*, 272.

[65] Madison to Livingston, May 8, 1830, in Washington *Globe*, February 4, 1833; *Letters and Other Writings of James Madison* (Cong. ed.), IV, 80.

had caused him to hesitate and await developments. Jackson's attitude was of most important consequence to the nullifiers, and uneasily they awaited his action. This came unexpectedly at the anniversary celebration of Jefferson's birthday in Washington on the evening of April 13, 1830. Benton, who "was the master mover and power behind the celebration," [66] made certain that the President was extended an invitation. Jackson accepted and availed himself of the effective opportunity to disclose his disapproval of Calhoun's theories. These sentiments were expressed in his toast to "Our [Federal] union, it must be preserved," which left the nullifiers stunned. The occasion was most significant: the President refused to become an ally of the southern movement; Calhoun was compelled to take an open stand; and with the widening of the breach between the two, Van Buren was able to advance his own personal ambitions by forcing the two still farther apart.

As early as the fall of 1829 another leaven was at work to foment discord between the President and the Vice-President, which has come to be known as the "Eaton Affair." Shortly before his appointment as secretary of war, John H. Eaton had married an unconventional, vivacious, charming widow, Peggy (Margaret) Timberlake, nee O'Neal, whose conduct before her marriage bespoke somewhat the environment of a tavern which had been her home. The free manners of this clever and beautiful woman aroused the jealous displeasure of the less attractive matrons of Washington society, and with the sudden elevation of this innkeeper's daughter to the exalted position of a cabinet member's wife, they de-

[66] Richard R. Stenberg, "The Jefferson Birthday Dinner, 1830," in *Journal of Southern History*, IV (1938), 334–45. For a brief account of the Dinner, see Lynch, *Fifty Years of Party Warfare*, 379–83.

termined to ostracize her. In this campaign they were led by Mrs. John C. Calhoun and the wives of three members of the cabinet. Jackson was convinced that Peggy was the victim of grave injustice, and he ordered his advisers to pay proper respect to the injured lady. The fear of domestic insurrections caused most of them to refuse; and the President considered the combination to ignore Eaton an intrigue to discredit his Administration. Van Buren, however, who was a widower, won instant and lasting favor with the Chief because of his chivalrous attentions to Mrs. Eaton. From this time forward, the Calhoun cause began to weaken and shortly Van Buren became the heir-apparent.

Calhoun had played into the hands of his enemies; first, in the Eaton affair; secondly, indirectly through Hayne's sentiment in the debate with Webster; and, lastly, by his open accord with the nullifiers at the Jefferson dinner. It was this last move that had ruined whatever chances he may have had of gaining the support of Pennsylvania and New England should he decide to bolt the party. All three events had operated to intensify Jackson's dislike for him; and with his identification with disunion, his enemies could now safely use the effective weapon they had held in reserve against him.

Not later than the fall of 1829 Jackson had been informed that Calhoun, when secretary of war, had urged in 1818 that he be disciplined for his invasion of Florida. Up until that time he had thought Calhoun was responsible for his escape of official censure, yet, subsequently, he said nothing openly, as Calhoun had a powerful following, and he could ill afford to make a false move.[67] On

[67] For an interesting view of the background of the break between Jackson and Calhoun, see Richard R. Stenberg, "Jackson's 'Rhea Letter' Hoax," in *Journal of Southern History*, II (1936), 489–96.

May 12, 1830, Jackson forwarded to Calhoun Crawford's letter under date of April 30, in which the Georgian had stated that Calhoun, while in Monroe's cabinet, had advocated the punishment of Jackson "in some form" or, at least, that he be reprimanded. The correspondence between the two highest ranking officials ended in a curt note from Jackson informing Calhoun that "no further communication with you on this subject is necessary."

By the end of November, 1830, the rupture between Jackson and Calhoun was beginning to be known generally; and, as Duff Green, editor of the *Telegraph,* was a devoted Calhoun man,[68] it became necessary for the Administration to establish a newspaper to serve as its official organ. Francis P. Blair of Kentucky, a friend of Amos Kendall, was induced to come to Washington, and the *Globe* was established in December, 1830.[69] This partisan editor not only served the Administration admirably but also advanced the cause of his friend, Van Buren. The breach between Jackson and Calhoun was further accentuated when the Vice-President published the entire Seminole correspondence in his effort to crush the New Yorker. The *Globe* charged Calhoun with an attempt to sow dissension in the party.[70] The Administration press and the politicians took up the charge and by the spring of 1831 the whole country knew of the conflict. All hope of peaceful relations between Jackson and Calhoun was destroyed. Calhoun was isolated; and, ceasing to be an important factor in national politics, he became only a sectional leader.

[68] Thomas H. Benton, *Thirty Years' View* (New York, 1854), I, 129.

[69] William E. Smith, *The Francis Preston Blair Family in Politics* (New York, 1933), I, 56–67.

[70] Washington *Globe,* February 21, March 16, 1831, *et seq.*

Van Buren was responsible for the plan whereby Jackson would secure a harmonious cabinet.[71] Fearing that summary dismissal of Ingham, Branch, and Berrien would result in irreconcilable hatred in the party, it was agreed that Van Buren and Eaton should resign voluntarily during the month following the adjournment of Congress. This would enable Jackson with every outward appearance of impartiality to call for the resignation of those members who, along with Calhoun, were held responsible for the social crisis. Jackson and Van Buren recognized the political necessity of selecting as secretary of state a man of outstanding ability and party regularity who would command the respect and confidence of the general public. They decided to offer the post to Livingston, and immediately, April 9, Van Buren wrote Livingston at Montgomery Place, "We wish to see you here at the earliest practical moment, on an affair of deep interest." The utmost secrecy was to be given this communication.[72] Fearing that Livingston might decline the appointment, Jackson refused to accept Van Buren's resignation until he had conferred with the Senator.[73]

The political developments were as surprising to Livingston as they were to his wife when she received his letter informing her of his conference with Jackson. The offer of "the first place in an entire new Cabinet" was pressed upon him with all the warmth of friendship and every appeal to his "love of country." The President reluctantly granted time for consideration but insisted, "My friend Livingston, you must accept." [74] Back at

[71] Fitzpatrick (ed.), *Autobiography of Martin Van Buren,* 402–408.

[72] Van Buren to Livingston, April 9, 1831, in Van Buren Papers, XIII, 3003.

[73] Jackson to Van Buren, April 12, 1831, *ibid.,* 3018.

[74] Hunt, *Life of Edward Livingston,* 358.

Montgomery Place he considered all angles of the question and hesitated to give up his "independence." Doubts of his "ability to fill the office" arose, for he knew "nothing of the details" and the "political intrigues would worry him." He preferred to retain his seat in the Senate as he had "learned to consider it the most dignified and independent situation in the country." He was "aware of the labor" and the "exposure of abuse" he might expect in the office, yet "such appeals were made to" his "feelings" that he "thought it a duty to yield." [75] His decision made,[76] he returned to Washington May 5, and entered upon the duties of the office nineteen days later. The first and most important step had been made in the reorganization of the cabinet on a Van Buren basis.

[75] *Ibid.*, 360–62.

[76] Livingston to Jackson, April 20, 1831, in Jackson Papers, LXXVII, 15,114.

MONTGOMERY MANSION HOUSE

Chapter XIV

SECRETARY OF STATE—DOMESTIC AFFAIRS

THE sixty-eight-year-old, quietly disposed Livingston exhibited exceptional courage and loyalty in accepting the position of secretary of state in this period of relentless conflict. During these hectic days, when party warfare was so vicious, intraparty jealousies so bitter, and foreign diplomacy determined by domestic exigencies, political reputations were destroyed overnight. The post was all the more difficult to occupy because previously it had been held by the recognized favorite of the President who was considered the official spokesman of the Administration. The natural supposition that Livingston would assume Van Buren's strategic position centered on him the attack not only of the hostile press, but also of the envious members of his own party. Nevertheless, the marked ability he displayed in the solution of both domestic and foreign problems earned him a reputation for statesmanship that does not suffer in comparison with that of his predecessors, Jefferson, Madison, Monroe, Adams, and Clay.

In resigning from the Senate, Livingston informed Governor A. B. Roman that this step was prompted by a desire to comply with the wishes of those who felt that he could be more useful in the new position. Certainly, in

accepting the appointment, he declared, neither his personal interest nor his ease had been considered, and much less his ambition, for the change entailed greater labor, more responsibility, and greater exposure to obloquy and misrepresentation. As was to be expected, the opposition press attacked the appointment and seemed to consider "it a part of their duty to rake up" all of the abuse they could.[1] In addition to the usual objections advanced against official appointments, the old charges of embezzlement [2] and of his hostility to Jefferson were revived.[3]

Livingston's conciliatory manner, his uprightness of purpose, and the weight of his reputation convinced the editor of the *Globe* that "all conspire to fit him to give our foreign intercourse the most promising results." According to the St. Louis *Beacon,* "The West especially has reason to rejoice" over the selection, as the new Secretary had "on various occasions proved himself to be a friend of her interests." [4] While the appointment was "a matter of just state pride," the *Courier* regretted the "calamity," for it deprived "Louisiana of the services of the ablest representative she had ever possessed." It left "the friends of the administration in this state . . . virtually unrepresented in the national legislature" at the particular time when "the sugar duty is unadjusted" and threatened with repeal.[5]

[1] Hunt, *Life of Edward Livingston,* 360.

[2] The New Orleans *Louisiana Courier,* July 12, 1831, referred to the "unprincipled attacks" of the "opposition editors."

[3] The Washington *Globe,* June 20, 1831, quoted in *ibid.,* August 12, 1831, reported that in Kentucky effort was being made "to injure the character of the present Secretary of State by pretending he was hostile to Jefferson."

[4] St. Louis *Beacon,* quoted in New Orleans *Louisiana Courier,* July 16, 1831.

[5] New Orleans *Louisiana Courier,* May 10, 1831.

Even after Livingston's acceptance of the secretaryship, many difficulties were encountered in the formation of the new cabinet. Louis McLane was recalled from London and placed in charge of the Treasury Department in order to make a place at the court of St. James for Van Buren. Levi Woodbury accepted the appointment of secretary of the navy which had been held by Branch, and Barry, the only holdover, remained postmaster general. Senator Hugh L. White's refusal to accept the position vacated by Eaton disturbed Jackson, who called upon Van Buren and Livingston for assistance in selecting a new secretary of war, as the task was "one of some difficulty." [6] Following the futile efforts of the President and his friends to induce White to accept the offer, the position was given to Lewis Cass, governor of the territory of Michigan.

On the assumption that Livingston now dictated the policies of the Administration, he was importuned by the friends of Berrien to save his place in the cabinet as "it would have a good effect upon affairs of the party, both as to its bearing upon the Indian and Eaton question." Livingston was in sympathy with the move and expressed the "wish that it could be so" but doubted if he "could say anything on the subject unless consulted with." Jackson effectually terminated the agitation when he informed one of the Berrien emissaries that while, personally, he "would have been glad to retain Berrien," thought highly of him, felt kindly toward him, it was impossible for him to do so, as his removal "was a necessary part of the arrangement he had been compelled to

[6] Jackson to Livingston, June 24, 1831, in Bassett (ed.), *Correspondence of Andrew Jackson*, IV, 303. "The President with his respects to the secretary of State, requests to see him early this morning on the subject of a fit character to fill the office of Secretary of War."

make." [7] Of the two most seriously considered for the position as attorney general, Roger Brooke Taney of Baltimore was offered the post and James Buchanan was appointed as minister to Russia.

In accordance with instructions, Livingston, June 21, notified Taney of his appointment and requested that he report when he found "it convenient to come on and assume the duties of the office." [8] Informed through other channels that the position "need not interfere at all with your affairs" and that a change of residence was unnecessary,[9] Taney, June 24, requested Livingston to inform the President that he would report at the earliest possible date.[10] Almost three months had been spent in forming the new cabinet and it was not until August that McLane reached Washington and assumed the duties of his office.

The repercussions which followed the disruption of the cabinet had not subsided when Congress convened in December. Usually congressional sessions preceding a presidential campaign are important, but few if any had been as exciting and important as was this one. Clay's return to the Senate and Calhoun's defection had strengthened the opposition, which determined to harass the President and discredit the Administration. Considering his naturally pugnacious nature, Jackson was now quite conciliatory and gave every evidence of desiring a quiet congressional session. His annual message [11] was one of the mildest and shortest he ever pre-

[7] Francis S. Key to Roger B. Taney, June 14, 1831, in Samuel Tyler (ed.), *Memoir of Roger Brooke Taney* (Baltimore, 1876), 168–71.

[8] Livingston to *id.*, June 21, 1831, *ibid.*, 173.

[9] Key to *id.*, June 16, 1831, *ibid.*, 172.

[10] Taney to Livingston, June 24, 1831, *ibid.*, 173–74.

[11] James D. Richardson (ed.), *A Compilation of the Messages and Papers of the Presidents, 1789–1902* (Washington, 1903), II, 544–58.

sented to Congress. He gave considerable emphasis to the numerous and important diplomatic successes of the past year. He expressed satisfaction that "our national policy" enabled the President to make a "statement of our affairs" without fear of "any indiscreet exposure of what in other governments is usually concealed from the people." If Livingston influenced the tenor of the message, he had occasion subsequently to recall the latter part of this passage which declared, "we have happily no political combinations to form, no alliances to entangle us, no complicated interests to consult . . . we give no advantage to other nations and lay ourselves open to no injury." [12]

Especially noteworthy, in light of subsequent developments, were Jackson's statements with regard to the financial situation and the question of rechartering the second Bank of the United States. He did not conceal his satisfaction with the favorable outlook for a speedy retirement of the total national debt and notified Congress that its chief business of the session was to adjust the tariff to the improved conditions in the financial affairs of the nation. Even the bank question failed to elicit a militant statement. "Entertaining," he said, "the opinions heretofore expressed in relation to the Bank of the United States as at present organized," he had felt it his duty to make them known to "the Legislature and the people" in order that the problem might be disposed of in the manner best serving "the public interests" and in the light of constitutional provisions. "Having thus conscientiously discharged a constitutional duty," he concluded, "I deem it proper on this occasion . . . to leave . . . [the Bank] for the present to the investigation of an enlightened people and their representatives." [13]

[12] *Ibid.*, 553. [13] *Ibid.*, 558.

The opposition interpreted Jackson's attitude as a sign of weakness and fear and made the blunder of carrying the fight to him. He was not surprised that the first offensive move was in the Senate against his recess appointments. Following the transmittal of his nominations, December 27, the Senate, without delay, confirmed all cabinet nominations with the exception of Livingston's. The report of the Committee on Foreign Relations concerning Livingston's nomination and that of Van Buren was deferred until January 10, 1832. On the motion of Clay, the President was requested "to direct the proper accounting officers of the Treasury" to furnish the Senate with a detailed statement of the manner in which Livingston had cleared "the balance, lately standing on the books of the Treasury" against him, as to how it was contracted and how it had been discharged. Also, the report was to show how the value of the property was ascertained with which "that balance was paid" and "by what authority it was received in payment." [14] Two days later, his purpose of embarrassing the Administration having been accomplished, Clay withdrew his motion and Livingston's nomination was confirmed.[15] Action on Van Buren's nomination was delayed until the latter part of the month, when it was rejected by the deciding vote of Vice-President Calhoun, with the connivance of Clay, Webster, and George M. Bibb.

Livingston maintained that political necessity failed to justify Clay's contemptible action of humiliating him unnecessarily. This was particularly true since Clay was secretary of state at the time that he, a Jackson man, was attempting to effect the necessary arrangements with the Adams Administration to settle the old account with the government. Clay was evidently acquainted with his ar-

[14] *Senate Journal*, 22 Cong., 1 Sess., 503–504. [15] *Ibid.*, 504.

rangements with the Treasury Department to liquidate the debt whereby he had paid over $92,000 on the account during Adams's Administration. Consequently this unpardonable act of Clay's so inflamed the usual "most amiable and placable" Livingston that he seriously considered employing "any lawful approaches that promised to gratify his resentment." [16] His contempt for such political partisanship was exemplified in his refusal to retaliate. When Clay's fellow Kentuckian and political adversary, Humphrey Marshall, wrote to ask Livingston if the archives of the State Department did not show that Clay, while plenipotentiary to negotiate the Treaty of Ghent, had accepted a gift of £1,200 in silver plate from George III of England, the Secretary replied that although politically opposed to Clay, he did not believe there was "the slightest foundation" for the rumor. He refused, therefore, to "direct any inquiries which would show an injurious suspicion" that he did not entertain. As a rebuke to Clay, he continued, "if such a report is current, I should be sorry that even my silence should keep it alive," and "any political advantage, however great, would be bought too dear, if obtained by countenancing such calumnies on our opponents." [17]

Clay was seeking an issue for his presidential campaign, and since Jackson had made certain recommendations with regard to import duties, he decided for the moment that the tariff would best serve his purpose. That his utter disregard of southern sentiment on this question [18] contributed to the South Carolina crisis was of little or no consequence to him in the furtherance of his political ambitions. He maintained that the President intended

[16] Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 705.

[17] Hunt, *Life of Edward Livingston*, 369–70.

[18] Adams (ed.), *Memoirs of John Quincy Adams*, VIII, 440–41, 443–49.

"to destroy the protective system through the accumulation of revenue," and it was the duty of its friends to save it by the repeal of all duties that had been levied for nonprotective purposes.[19] The Administration plan of providing for no reduction of duties on "unprotective" articles previous to March, 1833, and a gradual and prospective reduction on protected goods, would, he charged, "destroy the protecting system by a slow but certain poison." [20]

In the House Clay's former chief, John Quincy Adams, was chairman of the Committee on Manufactures to which had been referred that portion of the President's message concerning "manufactures and the modification of the tariff." While certainly not a spokesman for the man who had defeated him, Adams co-operated with McLane in the preparation of the tariff of 1832, for he felt that the existing rates were unfair to the South. The House defeated the attempt to substitute the Clay Senate bill and its confreres forced the Adams bill on the Senate representatives in conference, thereby killing the tariff issue before the campaign had really begun. Both Jackson and Clay had treated the tariff as a political issue. Their action gave further offense to Calhoun and his state rights friends of South Carolina who made the tariff of 1832 the basis of their controversy with the Federal government.

Livingston's antipathy for Clay, however, did not influence his position on questions where principle was involved. Only on this basis can be explained his otherwise paradoxical position during the fight over the Bank recharter in which the Secretary of State opposed the President and aligned himself with the Bank forces.

[19] Bowers, *Party Battles of the Jackson Period*, 185.

[20] *Register of Debates*, 22 Cong., 1 Sess., 257–95.

Jackson was fully apprised of Livingston's consistently friendly attitude toward the Bank when he invited him into the cabinet "unfettered by any promise to party or to man." [21] During the debates on the Foot resolution Livingston had asserted, "I will support no important measure that I disapprove, merely because it is one of the present administration." [22] Jackson knew that Livingston's entire political career had exemplified this political tenet. Seemingly, he did not resent the attempts of his Secretary to win his support for the banking interests, and Livingston felt that his efforts violated no political propriety.

Jackson probably had not formulated definite opinions on most national questions when he entered the presidency, yet there could be no doubt as to his strong bias against the Bank as a financial institution. Although often rash in the outburst of his feeling, he could be as cautious and prudent as anyone when the occasion demanded. He had the Westerner's resentment toward the Bank for the incidental profits it derived from foreclosures on lands [23] and the Southerner's view of doubtful constitutionality,[24] but he recognized the power of the highly centralized banking system and refrained as long as he could from engaging it in conflict. The rumor circulated by the "Kitchen Cabinet" group that the Bank had used its influence against him in the 1828 campaign and the subsequent correspondence concerning this rumor between Secretary Ingham and Nicholas Biddle,[25] president of the Bank, had accentuated Jackson's

[21] Livingston to Mrs. Livingston, quoted in Hunt, *Life of Edward Livingston*, 361.

[22] *Register of Debates*, 21 Cong., 1 Sess., 256.

[23] Bassett, *Life of Andrew Jackson*, II, 586.

[24] *Niles' Weekly Register*, XXXVII (1829–1830), 275, 367.

[25] *House Committee Reports*, 22 Cong., 1 Sess., No. 460, pp. 438–71.

dislike for the financial institution. There were several contributing factors, difficult of interpretation, which determined Jackson's vacillating policy. Evidently he weakened in his opposition to the Bank at times, or he was guilty of duplicity by playing "fast and loose" with the friends of that institution. Too many reputable persons on different occasions gained the impression during conferences with Jackson that he was not definitely opposed to the recharter to have misunderstood him.[26]

Immediately following the 1828 election, Biddle attempted to overcome Jackson's antagonism for the Bank and to secure his approval of the renewal of its twenty-

[26] See Ralph C. H. Catterall, *The Second Bank of the United States* (Chicago, 1903), for: Lewis to Toland, November 9, 1829, p. 189, n. 3 (Biddle was to be informed of Jackson's gratification at Lewis's report on the Bank project and that "all things with regard to it will be well"); Bevan to Biddle, October 21, 1829, p. 188, n. 3 ("the President expressed himself in the most clear and decided manner friendly to the Bank"); Biddle to Senator Samuel Smith, January 2, 1830, p. 192, n. 3 ("the President spoke in the highest terms of confidence in the administration of the Bank . . . he doubted the right of the Government to incorporate a Bank out of the District"); Lewis to Biddle, May 25, 1830, p. 200 ("there must be some mistake because the report [of Jackson refusing to sign a bill] was at variance with what *I* had heard him say on the subject"); Nichols to *id.*, July 20, 1830, p. 201 ("I am well convinced that he will not interfere with Congress on the subject of renewing the charter"); Smith to *id.*, December 12, 1830, p. 203, n. 3 ("If the President finds that his scheme is not likely to take, I do not believe he will be opposed, altogether, to the present Bank"); Biddle to Coombs, March 23, 1831, p. 207 ("of the determination of the President towards the Bank, I have heard so much & such various opinions that I have ended by knowing nothing"); Shipen to Biddle, December 6, 1831, p. 212, n. 1 ("The President's private secretary . . . [wrote] that the Pres'dt. does not consider himself pledged against a renewal, and that if Congress passes a Bill with *proper modifications* of the charter his approval will not be withheld"). For newspaper discussion in regard to the Secretary's letter and the report that the President had given his sanction to a recharter bill prepared by representatives of the Treasury and the Bank, see *ibid.*, 212, n. 2.

year charter that expired in 1836. Although maintaining that the Bank was unconstitutional, Jackson told Biddle he was satisfied with its officials, and, in his message to Congress, would mention the Bank's services in the payment of the latest installment of the national debt.[27] Biddle received the first of the many surprises he experienced during his dealings with Jackson when the President came out definitely against the renewal of the Bank charter on the grounds that it was unconstitutional, inexpedient, and had failed in "establishing a uniform and sound currency." [28] He considered Jackson's charge of the failure to establish a sound currency most damaging and planned to counteract its effect by having Congress refute the statement through committee reports. On March 29 the Senate Finance Committee reported that the national currency was thoroughly and entirely sound.[29] Shortly afterwards, on April 13, the House Ways and Means Committee, of which Calhoun's friend, George McDuffie, was chairman, stated that the Bank was constitutional, indispensable, and had "furnished a currency more uniform than specie." This report also denounced as wholly undesirable the plan for a national bank which the President had considered as a substitute for the Bank of the United States.[30]

Biddle was pleased with the Senate and House reports, but several incidents occurred that gave him much concern. While Jackson's close personal friend and political adviser, Major William B. Lewis, assured him the rumor

[27] Biddle to Smith, January 2, 1830, *ibid.*, 192.

[28] Richardson (ed.), *Messages and Papers of the Presidents*, II, 462.

[29] *Register of Debates*, 21 Cong., 1 Sess., Appendix, 98–104; *Niles' Weekly Register*, XXXVIII (1830), 126–28.

[30] *Register of Debates*, 21 Cong., 1 Sess., Appendix, 104–32; *Reminiscences of James A. Hamilton; or, Men and Events, at Home and Abroad During Three Quarters of a Century* (New York, 1869), 151–52.

that Jackson would veto a bill for recharter was unfounded,[31] it was reported, following a visit of the Bank's arch enemy, Van Buren, to Richmond in the fall of 1829,[32] that the destruction of the Bank was to be the basis of the next presidential campaign. Biddle was further disturbed by the President's second annual message in which he stated that nothing had occurred to lessen the danger first apprehended from the Bank, and recommended as a substitute a national bank as a branch of the Treasury. The President's appeal to the state legislatures more thoroughly convinced Biddle that a "great struggle" was imminent in which "great caution and vigilance" would be required. He realized that should the state legislatures issue instructions, they would "force the members of Congress to vote against the Bank."

Biddle's plan of campaign marked him an excellent strategist. The selection of able lieutenants revealed a leader of keen judgment; the tactics employed, though some mistakes were made, indicated a man possessing generalship that ordinarily would have sufficed for victory. But the fates had foredoomed him to defeat. While his sincere interest was the welfare of the Bank, he jeopardized its existence when, prior to this period, he had made it a political issue by his activities in congressional and state legislative circles. Having once engaged in politics, Biddle could not now withdraw; and he was no match for the astute and crafty Jackson during this

[31] Lewis to Biddle, May 25, 1830, "confidential," as quoted in Catterall, *Second Bank of the United States,* 200, states that Jackson "still entertained the opinion that a *national* Bank might be established that would be preferable to the present U. S. Bank; but that if Congress thought differently, and it was deemed necessary to have such a Bank as the present, with certain modifications he should not object to it."

[32] *Niles' Weekly Register,* XXXVII (1829–1830), 172–73, 177.

stirring period of lightning-like shifts for political advantage.

Biddle made a check of the congressional members.[33] Judiciously extended favors, though legal, were designed to forestall an attack on the Bank. He made "an appeal to the reason of the Country" through widespread propaganda in an effort to secure the support of state legislatures. He was successful in securing an endorsement from the Pennsylvania legislature by a vote of seven to one in March, 1831. But he failed to prevent the adoption of a resolution opposing the recharter of the Bank by a strict party vote in the New York legislature the following month.[34] Although Webster refused to reply to Benton's speech against the Bank, the Senate, by a vote of twenty-three to twenty-one, denied the Missourian's request to introduce a resolution against it. In the House, the move to refer that part of the President's message to a special committee instead of to the friendly Ways and Means Committee was defeated by a majority of forty-three votes. When the knowledge of the break between Jackson and Calhoun became public, Biddle expected to gain the support of the Vice-President's following. With the reorganization of the cabinet, he felt that the Bank situation had improved materially, since it included three such strong friends of the institution as Livingston, McLane, and Cass.

It appeared that Livingston and McLane had convinced Jackson during the summer and fall of 1831 that his plan could not succeed and that it was the part of

[33] John Norvall to Biddle, December 19, 1830, in Reginald C. McGrane (ed.), *The Correspondence of Nicholas Biddle* (New York, 1919), 121; Thomas Cadwalader to *id.*, December 21, 1831, *ibid.*, 147–50.

[34] Hammond, *History of Political Parties in the State of New York*, II, 350-52.

wisdom to accept the old Bank with a modified charter.[35] Although Jackson had been persuaded not to mention the subject in his next message, Biddle felt that the secretaries had committed him too far. He considered it better for the Bank that the President should speak, as "his silence would not be so useful as his mentioning the subject." In compliance with Biddle's desires, Livingston and McLane prevailed upon Jackson to say that he now left the matter entirely "with the representatives of the people." The President made no protest when McLane informed him of his intention to praise the Bank and to recommend its recharter. He raised no objection even after the Secretary pointed out to him that the House Committee of Ways and Means might act favorably upon his report and bring in a bill to recharter, and, if it did, he, McLane, could not then oppose it. While Jackson "would be sorry if the question were forced upon him in that way," McLane assured Biddle that the Executive would not express "a shade of opinion" against the Bank or make any declaration other than that he would leave the matter to Congress.[36] The Secretary did insist that Biddle should not present the petition until after the election, otherwise the President would consider it an act of defiance and act accordingly. But, both he and Livingston were of the opinion that "if given time, the President would probably acquiesce in a re-

[35] Writing to James A. Hamilton, December 12, 1831, Jackson "said that his opinions had not changed; that he and McLane did not differ, as some supposed and then added: 'Mr. McLane and myself understand each other, and have not the slightest disagreement about the principles, which will be a *sine qua non* to my assent to a bill rechartering a Bank.'" Quoted in Catterall, *Second Bank of the United States*, 213; *Reminiscences of James A. Hamilton*, 234.

[36] "Memorandum by Biddle," October 19, 1831, in McGrane (ed.), *Correspondence of Nicholas Biddle*, 128–35.

charter" as he "was really disposed to cease war upon the Bank." [37]

At least Jackson's annual message indicated that he was loath to be forced to act on the Bank question until after the election.[38] The President realized that a majority in Congress favored recharter and that a contest during the session might defeat his ambition to receive a larger vote in 1832 than he had in 1828. Should the bill pass Congress and he approve it, he would lose support in the South and West; should he veto it, he would lose Pennsylvania and probably the election. Until late in November, 1831, Biddle had come to no decision with regard to applying for a recharter. No sooner was Clay's election to the Senate certain than he urged Biddle to make application for the recharter before the election. He assured Biddle that he believed Jackson would sign a bill for recharter now but probably would veto one after the election and practically stated if action were deferred he would oppose the recharter. Biddle decided to follow Clay's advice. In this manner the Bank irretrievably became an election issue on the side of the National Republicans who wanted only a veto by Jackson for the Bank to become a campaign issue.

The uncertainty of Jackson's real attitude on the Bank question following his ambiguous statements in the third annual message seemed removed by McLane's report to Congress. Shortly the rumor was abroad in the South and East that the President had changed his views and would not oppose the recharter of the Bank.[39] The anti-Bank men became alarmed over the developments

[37] Parton, *Life of Andrew Jackson,* III, 395, quoted Livingston to the effect "that, at this stage of the contest, the President was really disposed to cease the war upon the bank."

[38] Richardson (ed.), *Messages and Papers of the Presidents,* II, 558.

[39] *Niles' Weekly Register,* XLI (1831–1832), 325.

and considered the advisability of sending a messenger to London to discuss the situation with Van Buren. Though more pungently expressed than others, Randolph's letter warning Jackson that he was "surrounded with evil counsellors [Livingston and McLane]" [40] was typical of the attitude of the Bank's enemies. Jackson hastened to assure Randolph that McLane had spoken for himself and was "the last man who would desire to commit me on such a subject." [41] The President was careful to forestall reports that might reach Van Buren and to allay any fears that might be aroused by his actions. He sent the Minister a copy of his message and assured him that while "McLane differs with me, on the Bank" it was an "honest difference of opinion," for in his report "he acts fairly, by leaving me free and uncommitted." [42]

McLane, however, became discouraged when the Bank's memorial was presented to Congress and informed Biddle that if his advice to defer action were not taken, he could do nothing further for that institution.[43] Livingston, on the other hand, while not openly opposing the President, continued to champion the Bank's cause and strove to win the support of Jackson. He conscientiously believed it was a wise political move and

[40] John Randolph to Jackson, December 19, 1831, in Bassett (ed.), *Correspondence of Andrew Jackson*, IV, 387. On January 3, 1832, Randolph wrote to Jackson as follows: "I cannot help thinking that in having for leaders in your ministry two persons who differ so essentially from you on this great and vital question [the Bank] as do Messrs. L[ivingston] and McL[ane] you must find yourself in a *false position*." *Ibid.*, 395.

[41] Jackson to Randolph, December 22, 1831, *ibid.*, 387.

[42] *Id.* to Van Buren, December 6, 1831, *ibid.*, 379.

[43] Louis McLane to Biddle, January 5, 1832, in McGrane (ed.), *Correspondence of Nicholas Biddle*, 165–69; Charles J. Ingersoll to *id.*, February 21, 1832, *ibid.*, 183–84; *id.* to *id.*, February 5, 29, 1832, quoted in Catterall, *Second Bank of the United States*, 223.

that the institution met a financial need of the nation in an admirable manner. As the President knew that Livingston sought nothing, not even to be where he was, that he could "have no motive but the honor of the admin—," he could afford to brook Jackson's ill will by his persistence. The Bank officials held him to be "the predominating influence" [44] in the cabinet and were gratified when he continued in the trying position of intermediary between them and the Executive.

In the early days of February, Biddle received an intimation that a charter might not be vetoed.[45] As he cared nothing about the election, he decided to abandon Clay and the National Republicans and work with the President. George M. Dallas was urged to take the resolutions of the Pennsylvania legislature to Jackson, warn him not to antagonize the state, and, in the name of the directors, to accept reasonable modifications in the bill. At the same time Biddle approached the President through Livingston. The Secretary was to inform Jackson that the Bank could not withdraw the bill, but it was willing for it to become an Administration measure and accept whatever modifications the President might desire. Livingston was in accord with the plan and informed Charles Jared Ingersoll that the President would not oppose the bill on constitutional grounds "but that he had certain notions of his own as to the frame of the charter which ought to be complied with." [46] Following Ingersoll's suggestion that the President frame the bill to suit himself, Livingston, February 12, accompanied by McLane, called upon Jackson to secure his assent. At this conference the

[44] *Id.* to *id.*, March 1, 1832, in McGrane (ed.), *Correspondence of Nicholas Biddle*, 187.

[45] *Id.* to *id.*, February 2, 1832, *ibid.*, 171–72.

[46] Biddle to Ingersoll, February 6, 1832, *ibid.*, 174; Ingersoll to Biddle, February 9, 1832, *ibid.*, 174–78.

President stated what modifications he desired [47] and on February 21 Biddle was informed that Livingston had succeeded in winning over most of the President's advisers and "is confident of [the plan] succeeding." [48]

In Livingston's home on February 22, the Secretary outlined to Ingersoll "the President's views of the terms for a new charter." The plan as agreed to by Jackson, according to Livingston, provided that the government was to own no stock, but was to appoint directors on the parent board and one on each of the branch directorates; the states were to tax the Bank property on the same basis as other property within their borders; a certain portion of the capital was to be thrown open for new subscriptions; the directors were to nominate two or three of their number and the President would select one of them as president of the Bank.[49]

As Biddle agreed to the provisions of the plan, it appeared that Livingston's negotiations would be successful. But since Congress had taken no decisive step on the subject and Jackson had made no public declaration of his agreement, he did not consider his promise binding. The anti-Bank people were quite concerned over developments and were in the dark as to what would be the action of the President in the final analysis. Irrespective of whether Benton had determined to force Jackson's hand, or whether, all along, Jackson had worked with Benton to force a congressional investigation of the Bank, the action of the President was open to censure. If it were Benton's uninspired action, then Jackson broke his word to Livingston and Biddle. On the other hand,

[47] *Id.* to *id.*, February 12, 1832, quoted in Catterall, *Second Bank of the United States*, 225–26.

[48] *Id.* to *id.*, February 21, 1832, in McGrane (ed.), *Correspondence of Nicholas Biddle*, 183–84.

[49] *Id.* to *id.*, February 23, 1832, *ibid.*, 184–85.

if Jackson and Benton had worked in co-operation, then the President had "double-crossed" Livingston in attempting to ruin Biddle with the Clay forces and to leave him without support in Congress. That Jackson had not scorned to employ questionable tactics in the furtherance of his political interests was shown during the Calhoun controversy when he made use of John Rhea in his effort to indict Calhoun of duplicity in regard to the Seminole affair.[50]

Unquestionably, the opponents of the Bank had determined upon an investigation of that institution for campaign purposes. They knew that an examination would end the Bank's chances of securing a new charter [51] for Jackson would do nothing until Congress had concluded its work. They knew that even should the Bank be given a "clean slate that the President would veto it." [52] The turn of affairs disappointed Livingston, who informed Biddle that the "President must needs await the issue of the inquiry," [53] for there could be no shirking of an investigation if Jackson was to do anything for the Bank.[54] While Livingston continued to hope that he might be able to influence Jackson and felt sincerely that the President would have signed the bill but for the inquiry, he did not know what his Chief would do under the present circumstances.[55]

Early in March the Jackson leaders, directed by Ben-

[50] Stenberg, "Jackson's 'Rhea Letter' Hoax," in *loc. cit.*, 480–96.

[51] "*Its* [the Bank's] *millions will be lavished on* MEMBERS OF CONGRESS *and their constituents to* PURCHASE *a recharter.*" Washington *United States Telegraph,* quoted in *Niles' Weekly Register,* XXXVII (1829–1830), 275.

[52] Benton, *Thirty Years' View,* I, 235–38; *Reminiscences of James A. Hamilton,* 243.

[53] Ingersoll to Biddle, March 1, 1832, quoted in Catterall, *Second Bank of the United States,* 229.

[54] *Id.* to *id.,* March 3, 1832, *ibid.* [55] *Id.* to *id.,* March 6, 1832, *ibid.*

ton, had secured the appointment of a special committee in the House to investigate the affairs and management of the Bank.[56] This committee submitted three reports. The majority report charged the Bank with subsidizing the press and securing the support of certain members of Congress with loans and other abuses of its position. The minority report, and that of Adams, who reported separately, were exactly the opposite of that of the majority, but campaign material had been furnished.[57]

The majority report made a presidential veto inevitable, as Biddle realized, but he feared to withdraw the request for recharter. Quite naturally, Clay was opposed to such a move. All through June the fight continued in the Senate, and it was not until July 3 that a victory for the Bank was gained by a vote of twenty-eight to twenty.[58] In the House, McDuffie was able to muster a vote of 106 to 84 in favor of the bill.[59] Jackson and his friends had no doubt that Biddle, in disregarding Livingston's and McLane's warnings, had decided with Clay to make the Bank an issue of the campaign. With Clay assuming leadership of the Bank forces and Van Buren returning from England at this time, Livingston's attempts at influencing Jackson to leave the question with "the representatives" of the people were defeated.

Just as Clay's maneuver was a campaign move, so was Jackson's veto of July 10 a campaign document, and both leaders were satisfied. The unsuccessful attempt in the Senate to override the President's veto presented an opportunity which was not neglected by the party leaders to sound the keynotes of the approaching cam-

[56] Benton, *Thirty Years' View*, I, 235–38.

[57] *Register of Debates*, 22 Cong., 1 Sess., Appendix, 33–73; Benton, *Thirty Years' View*, I, 241.

[58] *Register of Debates*, 22 Cong., 1 Sess., 1073. [59] *Ibid.*, 3852.

paign. In the convention city of Baltimore, the three parties had selected their standard bearers: in September, 1831, the Antimasons had designated William Wirt as their leader; they were followed in December by the National Republicans who chose Clay as their candidate. It was not until May, 1832, that the dutiful Democratic delegates trekked to Baltimore to "draft" the Old Hero and, though grudgingly, to accept Van Buren as his running mate. With the adjournment, July 16, of one of the most "furious" sessions Congress had known, the presidential campaign began in earnest.[60] The Antimasons failed to develop into a real national party and Clay, to his sorrow, learned the mistake he had made in carrying the battle to Jackson.

In this campaign of demagoguery, vituperation, and intimidation,[61] the press played a conspicuous and important part. The editors were more active than ever before, with those in the capital taking the lead. The *Intelligencer,* although supporting Clay, was not so violently partisan in the support of the National Republicans as was Green's *Telegraph;* yet, in the use of vitriolic statements, it was forced to yield the laurel to Blair's *Globe,* which vigorously supported the Democratic Republicans. The rival editors not only fought each other with a ferocity unparalleled, but they did not hesitate to charge the political leaders of the opposition with every conceivable personal and official impropriety. Their publications were placed at the disposal of the political leaders who utilized this medium of publicity effectively in their appeal to class prejudice and class hatred.[62]

Blair had no more than begun the publication of an

[60] Benton, *Thirty Years' View,* I, 281–83. [61] *Ibid.*

[62] Smith, *Francis Preston Blair Family in Politics,* I, 72–76, 111–23.

extra weekly issue of the *Globe* before Green adopted the same plan for the *Telegraph* in an effort to reach the masses with party propaganda.[63] The fiery Blair did not hesitate to accuse the *Telegraph* of being subsidized by the Bank and friendly to the nullifiers. Green charged that the Administration long since had proscribed his publication. As a "means used to destroy this paper," he charged that the Secretary of State had issued orders to his friends in New Orleans who were aided "by the brother-in-law of Mr. Livingston (Mr. Carleton)" in calling "on each subscriber" for the purpose of having "them erase their names" from the *Telegraph* "list and add it to the *Globe*." [64] The *Globe* took keen delight in exposing Clay's intrigues with the nullifiers and the Antimasons [65] and constantly kept before its readers the Calhoun heresy and the coalition with the Clay forces.[66] The Democratic opponents made effective use of the cartoon in their warfare on Jackson.[67] They harped on the unfortunate sentence of the veto message which asserted that "each officer who takes an oath to support the Constitution swears he will support it as he understands it, and not as it is understood by others."

Early in the campaign it was evident that there was but one issue, the Bank, and Livingston realized that the Bank veto had not injured Jackson.[68] Clay had forced it, and the Jackson leaders took this issue to the masses,

[63] Bowers, *Party Battles of the Jackson Period*, 230.

[64] John Smith to Duff Green, April 13, 1831, in Washington *United States Telegraph*, June 2, 1831.

[65] Washington *Globe*, October 8, 1832.

[66] *Ibid.*, August 29, 1832, *et seq.*; Bowers, *Party Battles of the Jackson Period*, 234–38.

[67] Parton, *Life of Andrew Jackson*, III, 423–24.

[68] "The President has just left us for Tennessee. The Bank veto has not injured him." Livingston to John R. Livingston, July 24, 1832, in the Ford Collection (Manuscripts Division, New York Public Library).

who had always looked with suspicion and distrust upon the powerful financial institution. The Jackson campaign managers did not hesitate to commandeer the services of the cabinet members themselves in executing the plan of solidifying their forces. The clerks as well as the secretaries were sent on specific missions to those sections of the country where their influence was most effective. The neglect of official duty and the constant movement from place to place by these officials caused the *Telegraph* to refer to them as "The Traveling Cabinet." Immediately following the adjournment of Congress, Livingston made a tour through Pennsylvania and New York,[69] and, during the later days of the hectic campaign, he was in Virginia "to contribute his share in manufacturing public opinion"! The effectiveness these missions had was shown by Duff Green's indignant exclamation, "And yet, this is the fulfillment of those promises which placed Andrew Jackson in power." [70]

Since Wirt was friendly to Clay,[71] the Antimasons centered their attack on the Democrats, who ignored and refused to conciliate them. Livingston, the highest ranking member of the Masonic order in America, was made the target, as he was at the head of Jackson's cabinet. In the effort to align the Administration definitely with the Masons, John Quincy Adams gave full publicity to this fact by addressing his attack on the order to Livingston.[72] The series of six open letters from Adams, which were ignored by Livingston, tended to rally the Masons to the Jackson cause. A short time before the election, at the psychological moment, Blair made Livingston's answer

[69] Washington *United States Telegraph,* July 27, 1832.
[70] *Ibid.,* October 9, 1832.
[71] John P. Kennedy, *Life of William Wirt* (Philadelphia, 1849), II, 314.
[72] Washington *Daily National Intelligencer,* April 10, 1832, *et seq.*

to Adams by publishing in the *Globe,* without comment, Clay's letter to certain Indiana Antimasons. Should the President, Clay had written, use the power of his office to sustain, abolish, or advance the interest of either Masonry or Antimasonry, "it would be an act of usurpation and tyranny." [73] Throughout the country the Jackson papers followed the *Globe's* lead and the widespread publication of the letter defeated the plan of the coalition leaders to deliver the Antimason vote to Clay.

From the Hermitage, where he had gone in August in compliance with his physician's orders, Jackson followed the last stages of the campaign. He never doubted the final outcome of the election, which was a notable victory for him and his policies. Wirt carried only Vermont; and Clay was successful in Massachusetts, Rhode Island, Connecticut, Delaware, Kentucky, and in five of the eight electoral districts of Maryland. Jackson received the electoral votes of all the other states with the exception of South Carolina.[74] Having kept informed as to the trend of events in that state during the summer, Jackson fully understood the import of this threat and began his preparations for a struggle with Calhoun and nullification.

From its earlier intensely nationalistic spirit,[75] South Carolina had drifted far by 1828 when, following the passage of the tariff bill of that year, the threat of sedition was heard. Realizing that he had failed to destroy Van Buren's influence with Jackson and that little or no chance remained for him to occupy the White House after his break with the President in 1831, Calhoun

[73] Washington *Globe,* October 8, 1832; Bowers, *Party Battles of the Jackson Period,* 328.

[74] Edward Stanwood, *A History of the Presidency* (Boston, 1928), I, 164.

[75] David F. Houston, *A Critical Study of Nullification in South Carolina* (New York, 1896), 27–28.

openly became the leader of the nullifiers. On July 26 he issued his famous "Address to the People of South Carolina," in which were restated the arguments advanced in his "Exposition" of 1828. This avowed platform of his followers was widely read throughout the country and during the following months it was discussed freely in South Carolina. The minority Union party in the Palmetto state attacked the Calhoun doctrine, and the nullifiers called upon their leader for a simpler statement of the theory in order to refute the charges of the Unionists. Calhoun timed his reply to serve the purposes of the state campaign and on August 28 appeared his famous "Fort Hill Letter" to Governor James Hamilton, Jr. As a result of this agitation, the nullifiers carried the legislature by a large majority.

Determined to defy the central government, the South Carolina legislature, in response to the Governor's recommendation, called a state convention which met on November 19, 1832. Five days later, by a vote of 136 to 26, the convention passed the South Carolina Ordinance of Nullification declaring the tariff acts of 1828 and 1832 "null, void, and no law, nor binding upon this state, its officers or citizens." It instructed the legislature to resist the enforcement of the tariff in the state after February 1, 1833, and declared that if the United States attempted to exact further payment of duties "the people of this state will forthwith proceed to organize a separate government." When the legislature reassembled November 27, it authorized the Governor to call out the militia to enforce the laws of the state. In the excitement that followed, both Unionists and nullifiers held nightly meetings and threats of war and secession were heard in all sections of the state. For many weeks the situation was tense and the leaders of both parties strove to delay the

shedding of blood until all efforts for a peaceful solution had been exhausted. Jackson, nevertheless, took the necessary precautions to meet the emergency should it arise. In the meanwhile, after being assured of Hayne's seat in the Senate, Calhoun tendered Livingston his resignation as vice-president.

When Congress convened December 4, everyone awaited Jackson's message with keen anxiety, but he disarmed the nullifiers by his temperate statements and conciliatory manner toward South Carolina. Some of the National Republicans maintained that the message was a state rights document, but six days later, they, as well as the nullifiers, were to be surprised by the President's ringing answer to the bold challenge of South Carolina. In this answer no doubt remained of the President's plan to meet force with force and vigorously to assert the authority of the government. That Jackson had not formerly held such constitutional doctrines as the message contained was well known. He had previously practically approved nullification. That it was Livingston who made him understand what nullification really meant there can be no doubt, as he was the only influential member of Jackson's entourage who subscribed to such constitutional doctrines. While Livingston may have gone further in the development of the theory of government than Jackson approved when he finally came to realize the full purport of the document,[76] yet the fact that he selected his Secretary of State for the task was no accident. Livingston's nationalistic views were well known to the President, as he had enunciated them clearly during the debates in both the House and the Senate. The fact that the President had instructed the Secretary

[76] Parton, *Life of Andrew Jackson*, III, 466; John W. Burgess, *The Middle Period, 1817–1858* (New York, 1897), 240.

to begin the preparation of the Proclamation prior to the opening of Congress indicated that he recognized the necessity for both prompt executive action and the selection of the best available person for the commission.

The temper of the Proclamation was foreign to Jackson's nature. The logical development of the constitutional thesis and the penetrating intellectual searchlight displayed in detecting the weakest point of the opposing argument revealed the work of an analytical and legally trained mind, the mind of a man of sound judgment and ripe experience. While Livingston was preparing the document, Jackson was in constant touch with him as, naturally enough, he could think of little else at the moment. A check of Congress assured the President that he would be sustained, but if necessary, if driven to it, he was prepared to strike with the military arm of the government. The communication must be made immediately upon receipt of the acts of the South Carolina legislature; hence Livingston was urged to furnish him at once "sealed, by the bearer" such sheets as had been completed. Meanwhile, the Secretary was furnished with suggestions for an appeal to the patriotism of "the descendants of the Rutledges, the Pinckneys . . . with the descendants of thousands more of the Patriots of the Revolution." He was to amend and revise the suggestions, as Jackson instructed him to "let it receive your best flight of eloquence to strike to the heart and speak to the feelings of my deluded Countrymen of South Carolina." [77]

Although Livingston accepted the task with zest and was pardonably proud of the document,[78] there was little

[77] Jackson to Livingston, December 4, 1832, in Bassett (ed.), *Correspondence of Andrew Jackson,* IV, 494–95.

[78] Fitzpatrick (ed.), *Autobiography of Martin Van Buren,* 705; John R. Delafield, "Montgomery Place," in *New York History* (Cooperstown),

new expressed in the Proclamation, as in its preparation he had drawn largely from his speeches in Congress. By the use of direct quotations, paraphrases, and those arguments which he had advanced in 1824 and 1830 while engaged in the development of his constitutional concept of government, Livingston gave forcible expressions to its great, its controlling, principle when he contrived for Jackson to proclaim: "I consider, then, the power to annul a law of the United States, assumed by one State, *incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed.*" [79]

The Proclamation was a complete statement of Livingston's constitutional doctrines and a climax to his years of study and arguments as to the nature of the Union. Here again, in this document, as forceful and eloquent a treatise as he had ever written, he argued and pled for a national entity, over and above the states, embracing all of the people in one bond. The questions to be met were not new; neither were his answers. But the crisis precipitated by the imminent secession of South Carolina lent particular earnestness to his words.

A state had the right to veto a palpably unconstitutional act of Congress and resist its execution, and in the

XX (1939), 456. General Delafield states that "at Jackson's request, Livingston drew the proclamation" and the "original draft of this proclamation is here in the Mansion House."

[79] Richardson (ed.), *Messages and Papers of the Presidents*, II, 640–56. The proclamation was unjust to Calhoun in failing to notice that part of the South Carolinian's doctrine which implied a duty on the part of the Federal government to seek an adjustment by repealing the act, by compromising with the disaffected state, or by amending the Constitution.

event of coercion, to secede from the Union. So argued the South Carolina ordinance, basing these rights on the fact that the Union was a simple compact between sovereign states and that the states were the judge of the violation of their sovereignty and were capable of defending it constitutionally, even to the point of withdrawal from the compact. To this contention, Livingston replied: first, that a "palpable unconstitutional act" as here used really meant any unconstitutional act, since the state alone was judge and any act objected to would be deemed "palpably unconstitutional"; and, secondly, the veto power of a state was not only expressly forbidden by the Constitution but contradicted by the history of its development. The Articles of Confederation gave supremacy to acts of Congress, but union under the articles failed because no provision had been made for a judiciary to interpret and enforce these acts. The Constitution was adopted to create "a more perfect union" and it was inconceivable that this absolutely necessary provision for orderly government should have been eliminated. The judiciary and not the states, was the judge of the constitutionality of acts of Congress.

The right to secede, Livingston continued, was deduced from an erroneous idea of the sovereignty of the states. It was true the Constitution had been submitted to the states as sovereign units, but its adoption had been by the people and not by the states; and from the moment of its adoption, a nation had been created composed of all the people in all of the states. To this nation, each state had surrendered such of its sovereign rights as the Constitution specified, retaining those not expressly surrendered. Thus the states were now sovereign only to the extent of the reserved rights. The Union then was not a compact between sovereign states, in the sense that the

states were still sovereign, but a compact involving a certain specified loss of sovereignty by each state. That this was true and that a nation had been formed by the Constitution was evidenced by all the people acting collectively in the choice of a president, and by the representatives, though chosen by the people of each state, being representatives of the nation and having as their first and highest duty the promotion of the national welfare.

A nation having been created, it inevitably followed, Livingston argued, that no state could withdraw, for that would admit the impossible thesis that a government would destroy itself, for secession by any state would destroy the nation. Even the principle of estoppel, alone, would deny the right to secede, the mutual benefits and sacrifices exchanged during the national life by the people of all the states being beyond recall. Secession, he concluded, could only be a revolutionary right, not a constitutional one.

"Probably no document," according to Charles W. March, "ever issued from the Executive Department which gave rise to a more profound sensation. It confounded alike friend and foe of the administration." [80] Webster had criticized the Administration for having done "nothing, and said nothing, to arrest the revolutionary doctrines of nullification," [81] but he expressed gratification over the belated action of the Administration, and departed for Washington determined to give his support to Jackson in this fight.[82] John Marshall, who had feared that Jackson would destroy the Constitution,

[80] Charles W. March, *Reminiscences of Congress* (New York, 1850), 186–87.

[81] *Ibid.*

[82] Henry C. Lodge, *Life of Daniel Webster* (Boston, 1883), 208; Fitzpatrick (ed.), *Autobiography of Martin Van Buren,* 680–81.

rejoiced at the issuance of the Proclamation,[83] and Adams referred to it as a "blister plaster." [84] Clay joined with the state rights supporters in condemning the President's statement by commenting that it was "too ultra for me." Taney objected to some of its doctrines [85] and Tyler stated that the Proclamation had "swept away all barriers of the Constitution" and had established "a consolidated military despotism." [86] Van Buren was embarrassed by its doctrinal features. He prepared a resolution together with a report for favorable action by the New York legislature, in which he took issue with "the history given by the President of the formation of our government"—a resolution and a report calculated to satisfy the state rights men of Virginia.[87] Hayne, now governor of South Carolina, answered Jackson in an able, defiant document which William Campbell Preston contended refuted "all the show of argument of the President's Proclamation." [88] McDuffie declared that "if Congress should approve the principles of that proclamation, the liberties of the country were gone forever." [89] The dignity of the document had disappointed Calhoun who had hoped for "an intemperate, ranting denunciation of the Carolinians that would heat their blood and put them on the march." [90]

The charge of Calhoun's enemies that his failure to "make his appearance at Washington" at the opening of Congress was occasioned by his fear of Jackson was

[83] Beveridge, *Life of John Marshall*, IV, 570–73.

[84] Adams (ed.), *Memoirs of John Quincy Adams*, VIII, 511.

[85] Tyler (ed.), *Memoir of Roger Brooke Taney*, 188.

[86] Tyler (ed.), *Letters and Times of the Tylers*, I, 448.

[87] Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 545–53.

[88] Theodore D. Jervey, *Robert Y. Hayne and His Times* (New York, 1909), 335.

[89] Adams (ed.), *Memoirs of John Quincy Adams*, VIII, 505.

[90] Bowers, *Party Battles of the Jackson Period*, 265.

refuted by his friends with the explanation that "he remained to prevent an outbreak in South Carolina." On January 4, 1833, Calhoun took the oath and was seated for the first time as senator of the United States. "It was an impressive occasion. The Senate was crowded," according to March, to witness the ceremony of the leader of nullification taking "the oath of office" as a member of the body over whose deliberations he, as vice-president, had presided for nearly eight years.[91] Before Calhoun's departure for Washington, an effort had been made in Congress to solve the problem by enacting a bill for a lower tariff which automatically would end nullification as a practical measure.

Van Buren was one of the most active leaders in this attempt to effect a peaceful solution of the problem. He could not expect Democratic support in 1836 if the northern and southern portions of the party became involved in a conflict over the state rights question. In accordance with the plan, the Verplanck bill, which proposed to lower duties to a basis of 20 per cent in two years, was introduced in the House. Having secured the Administration's sanction of the bill, Van Buren hoped that with the aid of the South he could secure sufficient support among his friends in the North to ensure its passage. He was unsuccessful, however, as Clay's compromise tariff bill was substituted for it.

Jackson's special message of January 16 dealing with the general situation[92] served as his answer to Calhoun's request for copies of the President's Proclamation of December 10 and to Hayne's "Counter-proclamation." The message was used by Calhoun as the basis for his vigorous attack on the Proclamation in which he maintained that

[91] March, *Reminiscences of Congress,* 189–91.

[92] Richardson (ed.), *Messages and Papers of the Presidents,* II, 610–32.

the Union's only danger was from "military despotism" which was "the greatest danger with which the Union is menaced." Five days later the reply to the Senator came in the form of the "Force Bill." This bill, which Calhoun denounced as a tyrannical measure invading the rights of the states, precipitated one of the most violent debates in the history of Congress. In the futile effort to direct the debates to the constitutional question involved, Calhoun, on the following day, January 22, submitted resolutions which contained his views on the subject; but the Senate promptly tabled them.[93] Tyler, in one of the most forceful attacks against the measure, made an ineffectual bid for Clay's support; [94] and, during an argument regarding senatorial courtesy, William R. King of Alabama made an effort to draw Webster into the debate. The great nationalist indicated that he would reserve himself for Calhoun by replying that "the gentleman from Massachusetts fully understands the gentleman from Alabama, but he has no disposition to address the Senate at present, nor, under existing circumstances, at any other time, on the subject of this bill." [95]

The Administration was not at all pleased with the situation and the apprehension of Jackson and his supporters increased as they realized that Calhoun was preparing to deliver a powerful argument against the bill. With Livingston no longer in the Senate, the Administration had no one capable of coping with the Nullifier in debate. They recognized the necessity that Calhoun be answered and began the search for someone who could do it effectively. Even though they might desire it, they knew that Clay would never espouse any Jackson measure. Their only hope was that Webster might be pre-

[93] *Register of Debates,* 22 Cong., 2 Sess., 187–93. [94] *Ibid.,* 360–77.
[95] *Ibid.,* 403–404; Bowers, *Party Battles of the Jackson Period,* 271–72.

vailed upon to come to the support of the principles he had made his own.[96] When Grundy reported that he had "what he considered sufficient reason to believe that arrangements could be made with Mr. Webster and his friends," Van Buren objected strenuously to such a rapprochement on the grounds that it would furnish Clay "with materials to spring" upon them.[97] As Van Buren was associating with the state rights people of Virginia,[98] the desperate Jackson held his counsel; [99] Livingston called to see Webster at his home; [100] and Webster led the fight.

Although "accused of subserviency to the President for the sake of future favor," [101] Webster, on his own terms,[102] took charge of the Administration forces and successfully piloted the Force bill through the Senate. Abandoning all hope of inveigling Webster to speak first, Calhoun began, on February 15, one of his most powerful speeches. The defiant South Carolinian, injecting personalities, revealing hate of Jackson, restating his constitutional views, concluded his arguments on the second day with the solemn warning that "should this bill pass and attempt be made to enforce it, it will be resisted at every hazard—even that of death itself." [103] Maintaining that "there can be no such thing as secession without revolution," Webster proceeded to refute Calhoun's arguments, one by one, and pointed out the fallacy of nullification in that it would lead to the destruction of the Republic and "of constitutional and republican liberty." It was, he

[96] March, *Reminiscences of Congress*, 199.
[97] Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 677–78.
[98] *Ibid.*, 547–52. [99] *Ibid.*, 553.
[100] March, *Reminiscences of Congress*, 199.
[101] Benton, *Thirty Years' View*, I, 333.
[102] March, *Reminiscences of Congress*, 235.
[103] *Register of Debates*, 22 Cong., 2 Sess., 519–53.

pointed out, the duty of the general government to prevent these evils and its ability to perform this duty was dependent upon the passage of the Force bill.[104]

As January drew to a close, it became evident that Van Buren's plan of pacification had failed, as the Verplanck bill could not pass. According to Benton, Calhoun was not nearly so indifferent to war as he pretended; he knew that Jackson was ready to use force, place South Carolina under martial law, arrest him for treason, and turn him over to the courts for trial.[105] Some of Calhoun's friends among the National Republican protectionists and Bank men who were making common cause with the nullifiers against Jackson, began to consider the question of a compromise tariff as a means of extricating the South Carolinian and his followers from their precarious situation, as it would be "a pity to let Jackson hang them." [106] Conflicting versions of the movement credit the initiative to different individuals; but Clay, who first received the suggestion of a compromise plan "coolly and doubtfully," finally agreed to sponsor the bill. Learning that Webster was of the opinion " 'that the time had come to test the strength of the constitution and the government,' " [107] Clay ignored the gentleman from Massachusetts. The contents of the bill were "entirely concealed from him" until Clay presented it to the Senate three days before Calhoun began his attack on the Force bill.[108]

Although the *Globe* announced, "In plain English, we have a new coalition," [109] harmony did not prevail in the ranks of the allies. Calhoun objected to certain features

[104] *Ibid.*, 553–87; Bowers, *Party Battles of the Jackson Period*, 266–71.
[105] Benton, *Thirty Years' View*, I, 343.
[106] *Ibid.*, 342. [107] *Ibid.*
[108] *Ibid.*, 316–17; Bowers, *Party Battles of the Jackson Period*, 280–81.
[109] Washington *Globe*, February 20, 1833.

of the bill and they were eliminated in the House committee. But John M. Clayton announced that these would be introduced as amendments in the Senate and unless every nullifier voted for each one of them, he would kill the bill himself by moving to table it.[110] On February 25 the House passed the amended Clay bill which reached the Senate two days after that body had approved the Force bill. True to his threat, Clayton offered the amendments and, despite Clay's intercession, he forced Calhoun to vote for all of them.[111] As the stormy short session of Congress drew to a close, both the Compromise Tariff bill and the Force bill became law, and nullification was no longer a menace. Jackson—Livingston—Webster—Nationalism prevailed, the nullifiers' boast to the contrary notwithstanding. "Calhoun began it. Calhoun continued it. Calhoun stopped it,"[112] by departing posthaste for the convention in Columbia, where former Governor Hamilton was in the chair, to urge the acceptance of the compromise. And Clay, rather than Van Buren, was hailed the great "Pacificator."

The veritable ovation which Webster received following his display of "a patriotism worthy of admiration and imitation" in "relation to South Carolina" was gratifying to his pardonable pride. Graciously, he accepted Jackson's personal expression of thanks for "the debt of gratitude and admiration which he owed him," nor did he repel the friendly advances of the President and his associates.[113] He was in closer accord with Jackson on vital questions than with Calhoun or Clay. In consequence of Clay's dictatorial manner in the party councils and of his

[110] *Register of Debates*, 22 Cong., 2 Sess., 693, 697, 698, 700–701, 716, 799–800, 809.

[111] Benton, *Thirty Years' View*, I, 342–44.

[112] Parton, *Life of Andrew Jackson*, III, 447.

[113] Benton, *Thirty Years' View*, I, 333–34.

appointment as leader of the Bank forces in Congress, a coolness had developed between the two National Republican senators.[114] There were many points in common in the political philosophy of Webster and of Livingston. For some time friendly relations had existed between the two, and the Secretary now felt that the time and the occasion were propitious to gain the orator's adherence to the Administration.

During "frequent and earnest conversations" with Jackson, Livingston convinced him of "the absolute necessity of securing Mr. Webster's continued support of his administration." [115] This "colossal figure on the political stage" was cultivated by the Jackson senators [116] and he was invited to scratch from the "list of the intended nominees for offices in the Eastern States" the names of any personally objectionable to him.[117] Livingston's attempt to effect "a closer official relationship" was interrupted by Webster's departure in May for a tour of the West. On the trip Webster was entertained by Jackson's friends, and in reciprocating, he frequently complimented the President most highly. He also made arrangements with his friends in Boston to accord the President a cordial welcome there while on his visit in the East.[118]

Upon his return from the West in June, Webster met Livingston in New York where negotiations were resumed, and, on the authority of the President, the Senator was proffered a place in the cabinet.[119] It appeared

114 Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 687–88.

115 March, *Reminiscences of Congress*, 250.

116 Benton, *Thirty Years' View*, I, 334.

117 March, *Reminiscences of Congress*, 251.

118 Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 689–94.

119 Compare Van Buren's account of the interview, *ibid.*, 701–706, with March, *Reminiscences of Congress*, 249–51.

that the Boston *Gazette,* an Administration paper, had been correct when it stated that "the Proclamation of the President" was a "very fortunate document" for Webster, and prophesied "if that distinguished gentleman plays his cards skillfully" he could be "at the head of the administration party within twelve months." [120] But other forces were at work which led to the defeat of such an alliance. Jackson's determination to withdraw the public deposits from the Bank and place them with the leading state banks resulted in a difference of opinion which was not reconciled. Ambitious Jackson leaders made an effort to discourage the accord and Van Buren, especially, who feared that Webster might supplant him in 1836, strenuously opposed the coalition. All possibility of a closer understanding came to an end with Livingston's departure for France, for there was no one else to overcome the efforts of the opposition. Meanwhile, Webster's National Republican friends, assuming that Clay had lost the leadership of the party by allying himself with Calhoun, busied themselves to gain it for the Massachusetts Senator. Clay continued in command, however, and very soon he and Webster were again aligned in the fight over the removal of the deposits.

[120] Boston *Gazette,* quoted in Fitzpatrick (ed.), *Autobiography of Martin Van Buren,* 680.

Chapter XV

SECRETARY OF STATE— FOREIGN AFFAIRS

JACKSON dominated foreign relations in the same manner that characterized his conduct of domestic affairs. The motivating forces of his foreign policy were the expansion of trade and the settlement of the "spoliation claims" growing out of the Napoleonic Wars. The success of McLane's negotiations with Great Britain regarding the West India trade had aroused Jackson to a more aggressive policy of stimulating foreign commerce through commercial treaties and the extension of the consular service. The failure of preceding administrations to secure a settlement of the spoliation claims proved to be a challenge, which he accepted. His vigorous method of conducting foreign relations allowed but little opportunity for initiative on the part of any of the four Secretaries of State who served during his presidency. Livingston, nevertheless, conducted the affairs of the office with tact and dispatch, and, under the conditions, was an admirable guardian of foreign relations.

During Livingston's term of service, foreign affairs were somewhat uninteresting. The diplomatic problems were chiefly the continuation of questions previously raised, and policies determined before he entered the cabinet. Nevertheless, he was attentive to business; and,

while familiarizing himself with the details of office routine, he refused to become its servant. The lack of order and uniformity of business procedure in the consular establishment irritated Livingston. In order to "correct as many evils as could be done without legislation," he prepared "a set of instructions" for general use.[1] His frequent correspondence with the ministers, chargés d'affaires, and consuls enabled him to supervise their activities intelligently.

Livingston's aptitude for leadership was exemplified in his ability to direct by remote control the varied activities of his staff and to offer constructive criticism without giving offense. Equally tactful and effective were his suggestions regarding the establishment of a consular post or the warnings respecting the avoidance of internal political affairs, and his instructions to ministers or his judicious praise for a job well done. That his requests for information were definite and explicit was revealed by comprehensive reports from the members of the staff having to do with commercial conditions, internal political situations in foreign countries, and international relations. The able manner in which he discharged the duties of his office refuted both the criticism attributed to Jackson by Van Buren that Livingston was "illy qualified for the performance of executive duties," [2] and the accusation made by the President that he knew "nothing of mankind." [3]

Livingston's tact was further exemplified in his instructions to Van Buren as minister to Great Britain. After assuring his predecessor of his "perfect knowledge

[1] Livingston to the President of the United States, in *Register of Debates*, 22 Cong., 2 Sess., Appendix, 129–43.

[2] Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 704.

[3] Jackson to Van Buren, December 17, 1831, in Bassett (ed.), *Correspondence of Andrew Jackson*, IV, 385.

of the unsettled questions with Great Britain and the United States," Livingston ingeniously issued instructions in which he enumerated the questions for negotiation and the position of the Administration on each.[4] Because of conditions over which he had no control, none of the more important of the nine points listed as "still open for negotiation" was brought to a conclusion during Livingston's secretaryship. The interruption of the negotiations concerning the British impressment of American seamen occasioned by Van Buren's early recall and the failure to fill the vacancy before Livingston left the cabinet nullified all attempts to reach a solution of this as well as other problems.

Although at a disadvantage in being represented by a chargé, Livingston maintained amicable relations with London during the negotiations of certain delicate questions. He vigorously contended against the principle of freeing slaves shipwrecked on British soil as being "too dangerous to a large section of our country to be tolerated by us." In the discussions he laid the basis for the settlement in 1836 of American claims arising from such cases.[5] While refusing to sacrifice American interests in his earnest endeavor to solve the troublesome northeast boundary controversy, Livingston exhibited a spirit of fairness and a depth of understanding that merited success. That his suggestions for an agreement later were incorporated in the Webster-Ashburton Treaty of 1842 showed this.

[4] Livingston to *id.*, August 1, 1831, in Van Buren Papers, XIII, 3122–43.

[5] Van Buren to Lord Palmerston, February 25, 1832, *ibid.*, XV, 3553–66; Livingston to Aaron Vail, February 26, 1833, "Department of State, Instructions, Great Britain, XIV, 131," quoted in Francis Rawle, "Edward Livingston," in Samuel F. Bemis (ed.), *The American Secretaries of State and Their Diplomacy* (New York, 1927–1929), IV, 232.

The northeast boundary question which Van Buren bequeathed to Livingston [6] was purely a geographical one which arose from a lack of clarity in the treaty of 1783. The convention of 1827, providing for a reference of the points of difference to an arbiter, had been ratified, and the King of the Netherlands had been selected as the arbitrator. Fearing that the controversy might result in a general war, Jackson was agreeable to the King's report suggesting a fair line upon which England and the United States might agree. However, he directed Van Buren to ascertain from the British government its position before revealing his decision.[7] When reporting Great Britain's willingness to abide by the decision of The Hague, Van Buren, as an aid to the solution of the problem, suggested the acceptance of an indemnity for the loss of property under the terms of the King's report.

Although Van Buren's suggestion appealed to Jackson, he questioned its constitutionality and doubted that the Senate would approve such procedure.[8] The attitude of Maine and Massachusetts presented an additional obstacle. Political consideration had to be taken into account. The acceptance of The Hague report became more doubtful with the outbreak of frontier difficulties in the fall of 1831. During an election at Madawaska, four Americans were arrested by the New Brunswick authorities, and a border war seemed imminent. Livingston carried on an active correspondence with Governor Samuel E. Smith of Maine in an effort to prevent an outbreak of actual hostilities. He also conducted quasi-diplomatic

[6] *American Annual Register of Public Events, 1830–31* (Boston, 1832), 306–13.

[7] Livingston to Van Buren, August 1, 1831, in Van Buren Papers, XIII, 3122–43.

[8] Jackson to Livingston, November 10, 1831, in Bassett (ed.), *Correspondence of Andrew Jackson*, IV, 370–71.

negotiations with leaders in that state in an attempt to secure its support of The Hague report.[9] In 1832 a secret agreement was drawn up and signed both by representatives of Maine and by the Department of State. The agreement provided that in return for the surrender of all claims to the territory north of the St. John River and east of the St. Francis River, Maine was to be awarded adjoining lands and, also, the proceeds from the sale by the United States of a million acres of lands in Michigan.[10] The fight that developed in the Senate and the violent criticism of the press on the question of constitutionality made it politically inexpedient for Livingston to submit the agreement to the Senate for approval.[11]

Jackson was perplexed as to his course of action,[12] and, in his message of December 6, 1831, he advised Congress of the release of the Madawaska prisoners and of The Hague's suggested solution of the problem. The following day he notified the Senate of the attitude of the British government and requested that body to inform him whether it "would advise submission to the opinion delivered by the arbiter and consent to its execution." Immediately following Livingston's report to the Senate, January 2, 1832, the opposition became active and urged that the King's decision be not accepted. It contended that the cession of the territory of any state was unconstitutional and it was successful in having the Senate instruct the President that future negotiations with Great Britain were to be conducted upon a different basis.

[9] *Senate Documents*, 22 Cong., 1 Sess., No. 3.

[10] *Ibid.*; *American Annual Register of Public Events, 1831–32* (Boston, 1833), 12–15, 229–34.

[11] Bemis (ed.), *American Secretaries of State and Their Diplomacy*, IV, 227.

[12] Jackson to Livingston, November 10, 1831, in Bassett (ed.), *Correspondence of Andrew Jackson*, IV, 370–71.

During the remainder of his term Livingston carried on an extensive correspondence with successive representatives of the British government in an ineffectual effort to reach an agreement. The failure to ascertain a true boundary, he maintained, was not attributable to any insuperable difficulty, but rather to the inefficient methods employed and the lack of attention by the commissioners and the arbiter. He contended that a speedy and satisfactory arrangement could be made provided both parties manifested a conciliatory spirit.[13]

The relations between the United States and Russia had always been friendly and commercial intercourse had been liberal, but all attempts to negotiate a commercial treaty with St. Petersburg had been unsuccessful. Jackson's selection of John Randolph for the Russian mission had not been a happy one. The eccentric Virginian had resigned after a ten days' residence at the Russian capital. Buchanan, to whom Jackson offered the position through Eaton at a time when Livingston was ill, accepted the assignment, June 12, 1831, but delayed his departure until the following April. In his instructions to Buchanan, Livingston emphasized the importance of securing a commercial treaty and urged the negotiation of a treaty for the protection of the maritime rights of neutrals in time of war.[14]

Buchanan proved to be the outstanding diplomat of the Livingston regime. He was received favorably at the Russian court; he not only received a friendly reception from the diplomatic corps,[15] but he was a favorite "especially with the Emperor & Empress." He exhibited a keen

[13] *Senate Documents,* 24 Cong., 1 Sess., No. 414.

[14] Livingston to James Buchanan, March 31, 1832, in *House Documents,* 33 Cong., 1 Sess., No. 111, pp. 54–57.

[15] Buchanan to Jackson, June 22, 1832, in John B. Moore (ed.), *The Works of James Buchanan* (Philadelphia, 1908–1911), II, 199–200.

interest in European affairs, and the grasp he acquired of the political situation made his reports upon foreign conditions all the more valuable to the Washington government. He placated the Russian government when it became incensed by certain newspaper publications in the United States,[16] and exerted himself to counteract the effect of the articles by forwarding statements to America designed to give a more favorable interpretation of the Czar's actions. His reports on the French situation proved to be of invaluable assistance to Livingston later when he was minister to France.[17]

The commercial treaty negotiations moved smoothly and were brought to a speedy and successful issue December 18, 1832.[18] The dispatch with which this able Minister accomplished his major objective earned for him the compliments of both Jackson and Livingston. The Secretary vetoed Buchanan's request to return to the United States, as he was particularly eager to conclude a treaty with Russia providing for the rights of neutrals in time of war.[19]

Livingston's concept of neutral rights had found expression in his Penal Code for the United States. Retaliation, he held, was ineffectual. The remedy was to be found in the inclusion of provisions in treaties between nations which required each to punish those of its citizens who violated rights of neutrals. In his instructions to Buchanan, he urged the Minister to secure the inclusion

[16] *Id.* to John B. Sterigere, May 19, 1833, *ibid.*, 334; *id.* to Livingston, December 20, 1832, *ibid.*, 298–305.

[17] *Ibid.*, 211, 261, *et seq.*

[18] Buchanan to Livingston, December 20, 1832, *ibid.*, 271–98; David H. Miller (ed.), *Treaties and Other International Acts of the United States of America, 1776–1818* (Washington 1931–1934), III, No. 75, pp. 723–34.

[19] *House Documents,* 33 Cong., 1 Sess., No. 111, pp. 54–57.

of these humane sentiments by inserting them as specific articles in the contemplated treaty. In case of war between the contracting parties, the articles provided for the restriction of military operations to those classified as combatants, except to repel invasion or to defend property; the passage of laws designed to punish the subjects of either country guilty of any infraction of the treaty provisions, particularly those covering the breaches of humane rules, the attack on noncombatants, and the seizure of their property; and the continued effort of the contracting parties to secure the mitigation of the horrors of war. To the practical Charles Robert, Count Nesselrode, Livingston's plans were too idealistic and Buchanan failed to secure a sympathetic response. The Minister finally informed Livingston of his doubts as to any advantage accruing to the United States and of his fears that it would become an entangling alliance should any such treaty with Russia be concluded.[20]

America's interest in the trade of the Orient resulted in the attempt to conclude commercial treaties with the Asiatic countries.[21] In 1832 Edmund Roberts was issued a roving commission as special envoy to observe the conditions of commerce in the Far East. He was instructed to conclude such "treaties or other arrangements" as would be conducive to the increase of our "foreign commerce and its security." To facilitate his work and to aid him in gaining audiences with the eastern rulers, Roberts was furnished with gifts to be distributed at his discretion.[22]

[20] Moore (ed.), *Works of James Buchanan*, II, 335–38, 364–66.

[21] Tyler Dennett, *Americans in Eastern Asia* (New York, 1922), 128–34.

[22] Livingston to Edmund Roberts, October 21, 1832, in Edmund Roberts Papers (Division of Manuscripts, Library of Congress), I, 64, 834.

He was supplied also with letters of credence sufficiently elaborate in form to be acceptable to the powers "with whom you are to negotiate." Livingston specifically instructed him to observe the trade of foreign nations with the Asiatic countries and "last but not least" to make an attempt to open communications with Japan and "to gain this trade for our commerce." [23]

The results of the diplomatic mission in Cochin China, where Roberts first called, were not satisfactory. Questions of etiquette were raised and the American envoy refused to yield.[24] He transferred his field of activity to Bangkok and there his efforts were more successful. On March 30, 1833, he concluded a "Treaty of Amity and Commerce" with the Siamese government.[25] At Batavia, Roberts again received instructions from Livingston to visit Japan,[26] but he decided that a visit at the time was impracticable and proceeded to Muscat. There he was successful and, in September, 1833, he concluded a treaty with that government.[27] While Roberts negotiated treaties with only two Asiatic countries, the information as to the commercial opportunities in the Orient later proved valuable to those engaged in the expansion of American trade in the Far East.

Although Anthony Butler had concluded two important treaties with Mexico just prior to Livingston's acceptance of the cabinet position, the Secretary soon

[23] *Id.* to *id.*, July 23, 1832, *ibid.*, I, 64, 804–806.

[24] Roberts to Livingston, May 10, 1833, *ibid.*, II, 65,046.

[25] Miller (ed.), *Treaties and Other International Acts*, III, No. 74, pp. 755–58.

[26] Livingston to Roberts, June 6, 1832, in Edmund Roberts Papers, I, 64,808.

[27] Miller (ed.), *Treaties and Other International Acts*, III, No. 77, pp. 796–98.

realized that this appointment of Jackson's was unwise. For some years Jackson had wanted to acquire Texas,[28] and, as early as 1829, Van Buren had instructed Butler's predecessor, Joel Poinsett, to make Mexico an offer for the territory. Four possible boundaries were suggested, and the offer varied in proportion to the extent of the territory to be included in the sale, but the total was not to exceed $5,000,000. During the negotiations Poinsett wounded the Mexican sensibilities and was recalled in 1829, at which time Butler was appointed to the position. The new Minister was in hearty accord with Jackson's plan to acquire Texas, but found it impossible to prosecute the Texas project until after Van Buren's resignation.

The boundary treaty which Butler had concluded April 5, 1831, failed to end the friction between the two nations. The "arch-schemer" maintained that Mexican avarice would afford the basis for the settlement of the boundary difficulties between the two countries, and, in June, requested permission to increase the offer for Texas to $7,000,000, if necessary. In an effort to remove the causes of friction, protocols to the boundary treaty were added September 7 and December 17 of the same year. In February, 1832, during the Santa Anna revolution, Butler informed Jackson that several millions would be needed to "facilitate the negotiation, in which case we shall provide for that portion of the payment by a secret article." He next proposed a loan to Mexico of $5,000,000 to be secured by a mortgage on Texas which would be equivalent to an outright sale, as there was little probability that the loan could ever be repaid.

There still remains a question as to whether Jackson

[28] Eugene C. Barker, "President Jackson and the Texas Revolution," in *American Historical Review* (New York), XII (1907), 788–809.

had been informed of the plan of Sam Houston and his associates to secede from Mexico and form an independent state; nevertheless, it was decided to abandon all effort to purchase Texas. On March 20, 1833, Livingston informed Butler that his plan was impracticable for lack of constitutional authority, and that "the situation of affairs in the state of Texas y Coahuila makes it important that your negotiation on that subject should be brought to a speedy conclusion. It is at least doubtful whether in a few weeks any *stipulation could* be carried into effect." [29] Consequently, Livingston passed on to his successor another boundary problem bequeathed to him by his predecessor.

In his relations with Mexico, Livingston showed an admirable respect for the rights of a friendly nation and a desire to assist every legitimate power. In June, 1831, he urged Butler to employ his best efforts to prevent the use of illegal American naturalization papers which the Mexicans claimed were used for the purpose of avoiding their laws. On the other hand, vigorously but courteously, he contended for the rights of American citizens in that country and insisted that Butler exercise due diligence to secure and to maintain them.

The political conditions in Central and South America during this period were confused, thus making diplomatic relations with the Hispano-American nations difficult. Commercial treaties, however, were concluded with Colombia and Chile.[30] Colombia in 1831 had, by decree, undertaken to extend certain reciprocal concessions to the ships of the United States, but the decree had failed to come within the provisions of the United States statutes

[29] *Ibid.*, 793. For the text of the negotiations with Mexico, see Miller (ed.), *Treaties and Other International Acts*, III, No. 70, pp. 599–640.

[30] *Ibid.*, No. 73, pp. 671–700.

of 1824–1828.[31] In fairness to Colombia, Livingston suggested to Jackson, February 9, 1832, that Congress be urged to authorize the President to exempt from American duties Colombian vessels and their cargoes coming directly from Colombian to United States ports. After Congress had passed the reciprocal act and during a discussion with the Colombian government relative to a tariff adjustment, it was learned that the New Granada government had full reciprocal treaties with Central America. Livingston immediately instructed the Washington minister at Bogotá to demand that, as the United States had a "most-favored-nation treaty" with the Colombian government, her ships should be accorded the same exemptions accorded those of Central America. Colombia receded from her original position and replied that the reciprocal privileges enjoyed by Central America had been granted as an equivalent for advantages received. The United States, therefore, was not entitled to such privileges as the Washington government had not accorded the Bogotá government similar concessions.[32]

The distinction between reciprocal concessions and those freely given was viewed by Livingston as one fraught with the probability of being construed as a violation of the Monroe Doctrine. As though anticipating an embarrassing situation such as did arise with Great Britain during the Mexican War, a situation which resulted in the Clayton-Bulwer Treaty compromise, he vigorously defended Washington's attitude during its discussions with Colombia.[33] He was diligent in protecting American rights which he interpreted the Doctrine to guarantee, and he was alert in preventing the violation of its provisions by European nations. Becoming con-

[31] *House Documents*, 22 Cong., 1 Sess., No. 46, p. 1.
[32] *Ibid.*, No. 173. [33] *Ibid.*

cerned over the danger of European interference through securing control of a proposed canal route extending through Central America, in July, 1831, he instructed the American chargé to the Central American states to ascertain whether a concession had been granted a Dutch company to construct a canal in Nicaragua. If the concession had been granted, the chargé was to demand for the United States the same facilities and particular privileges accorded other nations. On the other hand, if the grant had not been completed, the chargé was to procure the right of subscribing to the stock by the citizens of the United States or by the American government should Congress deem it desirable and proper to do so.[34]

Livingston was very cautious in his interpretation of the Monroe Doctrine, especially where questions arose affecting the inter-relations of Latin American nations. During a period when the relations between Argentina and Brazil were strained, Argentina made inquiry concerning the attitude of the United States. In response to this inquiry, Livingston advised the American chargé at Buenos Aires that the Doctrine provided for the protection of the Hispano-American states in case of European aggression, but did not obligate the United States to intervene in case of a war between these states. Yet, after Livingston's resignation from the cabinet, Washington refused Argentina's appeal to join in a protest against the British occupation of the Falkland Islands. Jackson avoided the issue of a violation of the Monroe Doctrine by interpreting the British action as merely a *reassertion* of a previous occupation.

During the controversy between the United States and Argentina over fishing rights, Livingston upheld very

[34] Bemis (ed.), *American Secretaries of State and Their Diplomacy*, IV, 248.

firmly, but with perfect courtesy and respect for the sovereignty of Buenos Aires, the right of ships of the United States to participate in the fishing off the Falkland Islands. The controversy became spectacular and for a time gave indication of becoming serious as the President dispatched a warship to the southern seas to protect American interests.

The Falkland Islands, although claimed by Great Britain, had been without formal government from 1771 to 1820, when they were occupied by an Argentine officer on the basis of a claim of former Spanish sovereignty. The islands had served as a trading point for whalers, sealers, and fishermen of various nationalities operating offshore. In 1831 Louis Vernet, governor of the islands, determined to assert Argentine authority and seized three American schooners "under the pretense they had infringed some unknown laws of the Republic of Buenos Aires for the protection of fisheries." One of the schooners escaped, one was sent to a prize court at Buenos Aires, and one continued its operations under a license by which Vernet shared in the profits.

The United States was temporarily without a diplomatic representative in Argentina at the time, and so its consul at Buenos Aires, George W. Slacum, immediately protested the seizure. Livingston was notified that Vernet had fitted out the captured vessel "with the avowed purpose" of using it "for further capture of American ships." When the Argentine government refused to consider a communication from the American consul as a formal protest of his government, Slacum sought the advice of the United States minister to Brazil. Slacum then turned to Captain Silas Duncan of the U.S.S. *Lexington* for assistance. In June, the Navy Department had directed Duncan to proceed to South American waters with gen-

eral orders "to protect the commerce of citizens of the United States," and he had arrived at Montevideo during the controversy. Duncan called upon the Buenos Aires authorities to deliver Vernet to him or to arrest and punish him for piracy. When that government failed to act, Duncan proceeded to the Falklands, captured practically the entire population, and deported them. The Argentine Confederation retaliated by terminating all official intercourse with Slacum and protested to the United States against Duncan's act of intrusion and violence.[35]

In his message of December 6, 1831, Jackson informed Congress that an armed vessel had been dispatched to the southern seas to protect American interests and that a minister shortly would be sent to Buenos Aires to investigate conditions.[36] On January 26, 1832, in the instructions to Francis Baylies, Livingston directed the new chargé to negotiate with the Buenos Aires government a treaty acknowledging the rights of citizens of the United States to the fisheries in question. Baylies not only was to advance the claim to the right of fisheries on every part of the ocean but also to contend for the scarcely legal right to inshore fisheries on unsettled coasts where the inlets were incapable of fortifications.[37]

The negotiations between Baylies and the Argentine government proceeded with scant courtesy on the part of either. The South American nation refused to disavow the acts of Vernet or to make the restitution and reparations demanded. It replied to Baylies' denial of Argentina's claim to the Falkland Islands by demanding reparation for Duncan's act, which terminated diplomatic

[35] *American Annual Register of Public Events, 1831–32*, pp. 16–18.
[36] Richardson (ed.), *Messages and Papers of the Presidents*, II, 553.
[37] *Senate Documents*, 32 Cong., 1 Sess., No. 109, pp. 9–14.

relations. After requesting his passports, but before his departure for Washington, Baylies, on August 19, wrote to Livingston: "We have attempted to soothe, and conciliate and coax these wayward and petulant fools long enough. *They must be taught a lesson,* or the United States will be viewed with contempt throughout South America." [38] The threat of the United States naval forces to break up Vernet's settlement and to transport him to Buenos Aires for trial was not carried out, nor were the claims of either government ever acknowledged. With the settlement of the question of the sovereignty of the islands by the British reoccupation in 1833, the tension between Buenos Aires and the United States lessened and diplomatic relations were resumed.

Since the days of the war of commercial restriction between France and England, the United States had urged her claims against France for the seizures and confiscations under the Napoleonic decrees. In line with Jefferson's policy the United States Congress in December, 1807, passed the Embargo Act which prohibited the departure of American vessels for foreign ports. In April, 1808, Napoleon ordered in his Bayonne decree the seizure of all American ships in French ports on the pretense that they were not American vessels since the Embargo Act had made it unlawful for them to sail from American ports. Much property was taken by this act, and later, several hundred vessels were seized when Napoleon in March, 1810, issued the Rambouillet decree confiscating every ship that had entered a French port or a port of her dependencies since the preceding May 20. The Corsican

[38] Francis Baylies to Livingston, August 19, 1832, in Bemis (ed.), *American Secretaries of State and Their Diplomacy,* IV, 253. For a fuller treatment of the controversy, see Julius Goebel, *The Struggle for the Falkland Islands* (New Haven, 1927).

justified his action on the basis of retaliation, for the Nonintercourse Act had forbidden American ports to French ships and the American government had authorized the seizure of French ships violating the act. The Washington government had vigorously protested to the French government, but it contended that France could not be held responsible for all of Napoleon's depredations. Although the United States had pointed out to the Bourbon Kings that France had paid for the acts committed by Napoleon against other countries, no effort was made by the French government to settle the claims as the rulers were constantly in need of money. The situation had become most irritating to the Washington government and Jackson was determined to secure a settlement of these claims.

Shortly after Livingston entered the cabinet, William Rives, minister to the Court of Louis Philippe, announced the conclusion of a treaty in which France stipulated to pay the American spoliation claims and the United States agreed to a reduction of duties on French wines. The negotiation of the French treaty paved the way for the consummation of treaties with other countries against whom the United States had similar claims. Livingston immediately urged the ministers to Portugal, Naples, and Spain to proceed at once to secure treaties with these countries.

A treaty with Portugal providing for payment of the American claims was signed at Lisbon on January 19, 1832, but payment was not made until 1837.[39] The delay of the settlement occasioned no unfriendly relations between the two nations, however, as the United States was familiar with Portugal's political and financial diffi-

[39] Miller (ed.), *Treaties and Other International Acts,* III, No. 72, pp. 653–69.

culties. The continuous financial stress of the Portuguese government during this period precluded the payment of even the small amounts involved in the American claims.

During the previous negotiations with the Two Sicilies, that government had declined to consider the payment of the American claims on the grounds that France had refused to acknowledge her obligations to the United States. Naples had maintained that its government was not responsible for the claims as the French dictator, Napoleon, had made his brother-in-law, Joachim Murat, King of the Two Sicilies and had forced him to execute his commands. Certainly, Naples had contended, the United States could not demand payment of them so long as France refused to recognize the legality of similar claims against her government.[40] In October, 1831, John Nelson was appointed chargé to Naples with the express mission of settling the claims.[41]

Livingston instructed Nelson to bring to the attention of the Neapolitan government the advantages accruing from a commercial treaty with the United States, but, in doing so, to make clear that an indispensable preliminary requirement was settlement of the claims. The original amount due the government was augmented by two items: twenty years' interest on the principal and expenses incurred by the United States in the return to America of its seamen who had been detained in Naples at the time of the confiscation. In addition, Nelson was to inform the government of the Two Sicilies that failure to make settlement would result in prompt retaliation by the American Congress.

[40] The history of the settlement of the claims, from American sources, is set forth in Paul C. Perotta, *The Claims of the United States Against the Kingdom of Naples* (Washington, 1926).

[41] *American Annual Register of Public Events, 1831–32,* pp. 19–20.

The Neapolitan government sought to avoid the main point at issue by attempting to direct the discussions to the old question of the legality of the Murat rule, for whose actions the present government refused responsibility. Tiring of the evasion and procrastination, Livingston, June 11, dispatched a communication to Nelson, by the frigate *United States,* in which he instructed the chargé to terminate the negotiations by demanding of the Neapolitan government an explicit answer of its intentions. Not only was Nelson to demand a definite statement of what measures were contemplated for prompt and full payment, but he was also to let it be known that the warship would wait twenty days to receive the reply. In case a satisfactory answer, one to include the assumption of the acts of the Murat government against American commerce, were not received within the twenty days, Nelson was to request his passports. And finally, Naples was to be informed that failure to receive a favorable answer would result in the exercise by the President of such measures to collect the claims as his constitutional authority permitted.[42] Appearance of the warship and the threat of retaliation had a very salutary effect upon the monarchy, as an offer was made to compromise by the payment of a lump sum. Haggling over the amount continued for several weeks, but, on October 14, 1832, an agreement was reached whereby Nelson accepted as payment in full the sum of 2,119,230 ducats.[43] The Senate ratified the treaty December 17 and the exchange of ratifications between the two contracting parties was made in Naples June 8, 1833.[44]

[42] *Senate Documents,* 22 Cong., 2 Sess., No. 70, gives the history of the settlement of the Neapolitan claims.

[43] Miller (ed.), *Treaties and Other International Acts,* III, No. 78, pp. 711–14.

[44] Washington *Globe,* August 15, 1833.

Negotiations with Spain moved more slowly, no progress being made until agreement was reached for the Madrid government to make remittances to the United States through France. With the signing of the Spanish convention shortly after the close of Livingston's secretaryship,[45] the treaty chapter of unredressed spoliation claims was closed. However, the signing of the treaties failed in all cases to insure the prompt payment of the indemnity and to prevent, as was the case with France, the development of strained relations between the signatory powers.

The treaty which Rives had concluded with France July 4, 1831, provided for the payment of American claims in six equal annual installments. It authorized France to deduct from each installment a sum not to exceed one twentieth of its annual payment to liquidate the French claims against the Washington government. It also provided for a reciprocal reduction of impost duties whereby France lowered the rate on long-staple cotton imported from the United States, a concession for the American reduction on imported French wines.

In his instructions to Rives on September 26, 1831, Livingston raised the questions of the advisability and the constitutionality of the reciprocal agreements in the treaty. He feared the deduction of the French from the American indemnity might jeopardize the interests of the United States claimants and he doubted the constitutionality of the reciprocal tariff arrangements.[46] Rives consulted with Van Buren concerning these points and the two overruled Livingston when the Minister at Lon-

[45] Miller (ed.), *Treaties and Other International Acts*, III, No. 78, pp. 811–22; *Register of Debates*, 23 Cong., 2 Sess., Appendix, 231–71, gives the diplomatic correspondence pertaining to the Spanish problem.

[46] Bemis (ed.), *American Secretaries of State and Their Diplomacy*, IV, 233.

don held that Congress would be required to provide for any amount due American claimants that might arise from the difference between the gross and net indemnity. This was pre-election year and Jackson was too much delighted with the situation to quibble over technicalities. He urged the Senate to ratify the treaty as "a source of irritation will be stopped that has for so many years in some degree alienated from each other two nations who, from interest as well as the remembrance of early associations, ought to cherish the most friendly relations." The Senate complied with his request, the ratifications were exchanged in Washington February 2, 1832, and, with reduction of the wine duties guaranteed by Congress July 13, the treaty became law.

In accordance with his desire, Rives departed for the United States September 27, 1832, and the Secretary, N. Niles, who acted as chargé until the following April, was in charge of the legation. On February 8, 1833, Livingston informed Niles that the Secretary of the Treasury, "in conformity with the provisions of a law of the last session of Congress," had drawn a draft against the French Minister of Finance for the first installment of the indemnity "and the interest thereupon" in accordance with the provisions "of the late convention." [47] On March 21, when Niles, in compliance with Livingston's instructions to "take an early opportunity . . . to apprise the French government of this arrangement," informed the Duc de Broglie of the transaction, he expressed "astonishment" at such precipitate action. The Minister of Foreign Affairs assured Niles that the French government had no intention of avoiding its engagements. Niles certainly understood that under the French constitution the

[47] Livingston to Niles, February 8, 1833, in *House Documents*, 23 Cong., 2 Sess., No. 40, p. 5.

executive lacked the authority to remit money without an appropriation. But, continued Broglie, the King would make every effort to carry out the treaty. Nevertheless, the Chambers adjourned without providing the necessary appropriation.[48]

The refusal of France to meet her treaty obligations precipitated action in Washington which enabled Livingston to realize his one remaining ambition. A foreign mission had long appealed to him, as it did to a majority of his associates, and he keenly regretted that conditions had forced him to decline Jackson's offer in 1829. He was one of the few outstanding leaders who had not represented the United States abroad, yet his desire for such service was well known to Jackson. With hesitation he had relinquished his freedom as Senator to accept the cabinet position in which he was denied the right to employ or discharge even clerks and menials.[49] In his present position he lacked the opportunity for initiative and was well aware of the intrigues to displace him as an adviser of the President.

McLane had resented Livingston's appointment as secretary of state and had assiduously cultivated Jackson's favor in hope of securing his position as a stepping stone to the presidency. Van Buren, although assuming the responsibility for Livingston's appointment to the cabinet, became jealous of the Secretary and sought to undermine his influence with the President. The "Little Magician," apprehensive that Livingston's efforts to effect a closer accord between Jackson and Webster would be detrimental to his own interests, contributed to the defeat of that plan. He was embarrassed by the doctrinal features

[48] *Niles' Weekly Register,* XLVII (1834–1835), 324, 327–28.

[49] Jackson to Livingston, August 7, 1831, in Bassett (ed.), *Correspondence of Andrew Jackson,* IV, 327–28.

of the Proclamation [50] and used against Livingston the situation which developed with the Jackson state righters following the publication of that instrument. Livingston also knew that Taney had informed the President of his objections to certain of the Proclamation doctrines.

Livingston realized that concerted action by these forces might destroy his influence any day, for he had not a time guarantee of the President's favor. During the Bank fight his prestige had suffered and a more bitter fight with that institution was imminent. Jackson knew that he was opposed to the removal of the Bank deposits [51] and Livingston could not foresee what effect the coming struggle would have on his own political fortunes, but the prospects for the continuance of his position as an influential adviser of the President were not bright. However, there remained nothing for him to do but to await developments.

All these contending forces contributed incidentally to the realization of Livingston's cherished ambition. McLane was opposed to the removal of the Bank deposits and now was all the more desirous of securing Livingston's position. Presently he was one of Jackson's favorites and the President was not averse to complying with his wishes in order that he might avoid the embarrassment that would arise should he remain secretary of the treasury. Van Buren, who was on friendly terms with McLane, was undoubtedly in agreement with Jackson when he wrote, "We were well aware that . . . [Livingston] was more at his ease in talking and not infrequently in acting upon public questions in the company of Mr. Webster and Mr. Biddle than with us." [52] Livingston had antagonized the state rights people and his presence in the

[50] Fitzpatrick (ed.), *Autobiography of Martin Van Buren*, 545–53.
[51] *Ibid.*, 603. [52] *Ibid.*, 704.

Secretary's office was a constant irritant to them. Jackson needed their support in the coming Bank fight. The French situation demanded attention and no member of the Jackson entourage was as well qualified to handle it as was Livingston.

The explanation for the President's failure to appoint Rives's successor to the French Court was apparent. With the close of the turbulent session of Congress, Jackson accepted Livingston's resignation as secretary of state and, on the same day, May 29, 1833, he announced the appointment of Edward Livingston as minister and envoy extraordinary to the Court of Louis Philippe.

Chapter XVI

MINISTER TO THE COURT OF LOUIS PHILIPPE

LIVINGSTON'S appointment as minister to France was not unexpected; in fact, during the past year, it had been currently rumored that he was to "go to France." [1] Jackson's irritation caused by the dilatory French government, and his decision, following the draft protest, to bring matters to a crisis were well known. With the adjournment of Congress, the President felt that "the condition of our domestic concerns" which "rendered any change in the Treasury and State Departments inexpedient" [2] no longer existed and that the time was propitious to force the issue with the French. Livingston's appointment met with universal approval; even among the opposition no question was raised as to his peculiar fitness for the delicate mission. It was with regret that the New York *Journal of Commerce* parted "with him as Head of the Department of State" for "his enlarged views, great industry, and personal courtesy, have rendered his administration of that Department highly popular with all parties." [3] Even the National Republican editors of

[1] Richmond *Whig,* quoted in Washington *Daily National Intelligencer,* July 26, 1832.

[2] Richmond *Enquirer,* June 7, 1833.

[3] New York *Journal of Commerce,* quoted in Washington *Daily National Intelligencer,* June 5, 1833.

the *Intelligencer* felt that "the President could not make a better selection among his friends" and expressed themselves as being "very sorry to part with Mr. Livingston." [4] He had, they believed, "with fidelity, as well as ability, discharged the duties" of his office and they "entirely approved" of his appointment.[5]

The selection of Livingston appeared to have been a wise one and to have presaged an early and satisfactory solution of the existing difficulties. Seemingly, he possessed all requisites for the position. The new Minister was not only well versed in law, but also had a thorough knowledge of the background of French law. He was intimately acquainted with the French language and his close associations with the Creoles of Louisiana had given him a sympathetic understanding of the habits and customs of the people with whom he would associate. His work in the field of penal reform had gained an enviable international reputation, and, in particular, he was admired by that group of young French liberals of which Victor Hugo was a leader.[6] While in Congress, he had voted for the French claims and his old friend Lafayette was cherishing the hope of seeing him in France.[7] On May 8, just prior to the announcement of his appointment, Louis Philippe had approved his election as "a Foreign Associate of the Academy of Moral and Political Sciences in Paris." [8] His son-in-law, Thomas P. Barton of Philadelphia, was to serve as his secretary and all indications pointed toward a pleasant and successful mission.

In his general instructions, McLane informed the new

[4] Washington *Daily National Intelligencer,* July 26, 1833.

[5] *Ibid.,* May 31, 1833.

[6] Victor Hugo to Livingston, March 27, 1834, in Hunt, *Life of Edward Livingston,* 405–406.

[7] Lafayette to *id.,* December 8, 1832, *ibid.,* 382–84.

[8] Washington *Daily National Intelligencer,* July 2, 1833.

Minister that France's payment of the first installment would require his prompt attention. Livingston was to ascertain the causes of the unexpected and unaccountable failure on the part of France to fulfill without delay her financial obligations under the treaty. The attempt of the French government "to excuse its own delinquency, by complaining of the United States for the mode adopted for receiving payment," was "an aggravation of the injury previously inflicted upon the interests of the United States." France was to be informed that the President would not permit a questioning of "the right of the United States to draw for the instalment by a bill of exchange." The government of Louis Philippe was to be apprised of Washington's disappointment at the failure of the executive department to have "applied to the Legislative branch for the necessary appropriation." He was to point out that "all advantages secured by that convention to the Government of France, and to its citizens," had been "in the full enjoyment ever since the date of the exchange of the ratifications." [9] In his supplemental instructions of July 25, the Secretary notified Livingston that he was to depart for his post immediately and on arrival he was "to enforce the obligations of the French government under the treaty." It was also his "duty to let it be clearly understood that this Government will rigorously insist upon the prompt and complete fulfilment of all the stipulations." [10]

Jackson was insistent that Livingston depart for France at the earliest possible date. On June 6 Livingston accompanied the President on his trip through the East as

[9] McLane to Livingston, June 3, 1833, in *Register of Debates*, 23 Cong., 2 Sess., Appendix, 110.

[10] *Id.* to *id.*, July 25, 1833, in *House Documents*, 23 Cong., 2 Sess., No. 40, p. 9.

far as New York where they were met by Van Buren for a conference on the French problem.[11] As the time for his departure approached, Livingston's favorable anticipations of the "honorable mission" assigned him gave "way to sensations by no means so pleasing." He realized that he was no longer in the center of political activities and immediately missed the "political importance" that the station he had filled had given him.[12] Others had sought his advice when matters of policy were to be determined, and he was not only unable to tell what "was going on" in the inner councils but he himself must now apply to others for such information.[13] "These drawbacks," the misgivings of his ability to manage the important national concerns, the apprehensions of his "leaving undone some matter of importance," and the "painful" feelings "attending a separation from his native country for an uncertain period," caused him to delay his departure as long as he could. In early July Jackson "expressed great anxiety" for his "speedy departure" and plans were made for him to sail July 16 on the *Delaware*. As the date for sailing arrived, Livingston wrote the Secretary of State "that it would be impossible" for him to be "ready before the 24th." [14] On July 30 Jackson wrote Van Buren to see that the Minister got "off soon" for "he ought to have been at Paris some weeks ago." [15] Finally, on August 14 he sailed from New York and twenty-eight days later, September 12, he arrived at Cherbourg.

[11] Washington *United States Telegraph*, June 6, 1833.

[12] Livingston's Diary, quoted in Hunt, *Life of Edward Livingston*, 388–89.

[13] Livingston to Trist, September 6, 1833, in Trist Papers, X, 57,200.

[14] Livingston's Diary, quoted in Hunt, *Life of Edward Livingston*, 388.

[15] Jackson to Van Buren, July 30, 1833, in Van Buren Papers, XVIII, 4180–81.

Thrown upon his own resources in making critical decisions while in France, Livingston revealed exceptional judgment, keen discernment, and wise initiative. He combined rare imperturbability of temper with a full appreciation of the requirements of his mission in meeting the crisis which taxed his abilities to the fullest extent. His observations were accurate, his analyses were clear, and his decisions were sound. Had not Jackson's opponents decided to make political capital of the French crisis, Livingston's task would have been less difficult and perhaps successful. Under the conditions, none other could have accomplished more, and the failure to secure payment due the Washington government was in no way to his discredit. In the trying days of the following months, Jackson's kindly expressed acceptance of his resignation from the cabinet served as a source of encouragement. It was reassuring to know that the President felt a deep sense of appreciation of "the very important aid which" he had "rendered in conducting the administration." When discouraged and depressed it was heartening to recall that it had given his old Chief pleasure to recount that throughout their "long acquaintance, in military as well as civil life," he had ever found Livingston's "eminent talents employed in advancing the good" of his country; and that whenever the two had "cooperated in the public service," Livingston had "left the evidence of exalted patriotism and unshaken integrity." [16]

On presenting his letter of credence to the King October 4, Livingston was warmly received by Louis Philippe who expressed his kindly feelings for the United States to the new Minister. He assured Livingston that the necessary laws for the execution of the treaty would be passed

[16] *Id.* to Livingston, May 29, 1833, in Bassett (ed.), *Correspondence of Andrew Jackson,* V, 102.

at the next meeting of the Chambers.[17] During the interval between his arrival in Paris and the convening of the Chambers, Livingston was busy familiarizing himself with the office routine and making personal adjustments to new surroundings. He contacted the political leaders of Paris and the provinces and conferred with some of the outstanding men in the industrial, commercial, and agricultural fields. He met the representatives at the other legations and visited the theaters, parks, and public gatherings.[18] Being keenly observant and trained to detect the political significance of chance remarks and seemingly unimportant incidents, Livingston soon discovered the real cause of the indifference of the King and his ministers.

The treaty was unpopular [19] and was described by the enemies of the government as a bad bargain. The opposition of the old regime was based upon its hatred for America because of the Revolution. The Republican opposition was a result of their hatred for Louis Philippe who as King was the personification of monarchy. Even the members of the *tiers parti,* upon whom the government depended for support on certain questions, were divided on the treaty question. The King's throne was shaky and he ruled in continual fear of the Deputies who refused to validate the treaty. He was in constant dread of a *coup d'état* by the Carlists or the Republicans and was apprehensive even of the *tiers parti.*[20] Consequently,

[17] Livingston to McLane, October 4, 1832, in Richardson (ed.), *Messages and Papers of the Presidents,* III, 130.

[18] Livingston's Diary, quoted in Hunt, *Life of Edward Livingston,* 390.

[19] Sérurier to McLane, August 31, 1833, in *House Documents,* 23 Cong., 2 Sess., No. 40, pp. 75–77.

[20] "Extract of a letter of February 1, 1835, addressed to the Editor of the New York *American,*" quoted in Washington *Daily National Intelligencer,* March 10, 1835.

Louis Philippe refused to prosecute the question actively and hoped for an auspicious moment when the unpleasant duty could be performed without jeopardizing his throne.

In addition to importuning the King, remonstrating with the ministry, interviewing influential members of the Chambers, and attempting to allay Jackson's irritation over French apathy, Livingston was alert to protect and promote American interests and prestige. In the summer of 1834 the Minister visited Savoy for his health and was surprised at the flourishing conditions. A market, he informed Jackson, was opening in the German states, particularly those on the Rhine, for some of our most important exports which "if duly attended to" would have important effects upon our commerce and agriculture.[21] A recognition of the advantages that would accrue from a "commercial treaty with some or all of the Italian States" prompted Livingston's offer to negotiate the treaties should his suggestion be received favorably.[22] Conditions were "very critical" and Livingston felt that "the occurrence of a general war in Europe" was almost certain. While he advised against being involved in it, he urged "we must demonstrate to all contending powers" that America possessed the spirit and the means of defending its commerce.[23] Practically all of Livingston's time and energies, however, were devoted to the ineffectual task of securing an amicable settlement of the claims.

On the day following his first interview with the King, October 5, 1833, Livingston assumed the offensive when

21 Livingston to Jackson, October 12, 1834, in Jackson Papers, LXXXVII, 17,837–38.

22 *Id.* to *id.*, October 13, 1834, *ibid.*, 17,842–43.

23 *Id.* to *id.*, July 14, 1834, *ibid.*, LXXXVI, 17,589–91.

opening negotiations with the French ministry. The Duc de Broglie, minister of foreign affairs, was given to understand the certain effect on American public opinion of France's contemptuous treatment of its treaty obligations. Livingston refuted the arguments that the demand for payment by the United States was out of line with the treaty requirements. The faith of the government of France, he continued, was "irrevocably pledged for the performance of the stipulations." The right of "any branch" of the French government to vitiate the pledge was denied and "the speedy performance of those engagements" was expected. While acknowledging that his expression of "astonishment" at the drawing of the draft "would authorize the species of arguments employed," Broglie assured Livingston that the necessary provisions for the execution of the treaty would be made at the next session of the Chambers.[24]

The results of McLane's definite and positive assertions of executive responsibility can be noted in this decision of the ministry to sponsor actively the appropriation bill. In informing Sérurier, the French minister at Washington, of the reason for the failure of authorization by the French Chambers, McLane pointed out that "the Legislature of France had never been called upon" for the appropriation and the executive department was therefore responsible.[25] With the ministry promising to sponsor the appropriation bill and with the Deputies meeting in December, Livingston felt encouraged. Being familiar with the intricacies of legislative procedure, and

[24] *Id.* to Broglie, October 5, 1833; Broglie to Livingston, October 23, 1833; Livingston to Broglie, November 11, 1833, in *House Documents*, 23 Cong., 2 Sess., No. 40, pp. 38–49.

[25] McLane to Louis Barbe Charles Sérurier, June 3, 1833, *ibid.*, 65–74.

realizing the hesitancy of the ministry to adopt an aggressive policy, he devoted considerable time to working with the members of the Chambers. In all of his efforts he had the active co-operation of Lafayette, who wanted the matter settled.[26]

He soon sensed the fact that the *projet de loi* would fail of passage unless public opinion in France or positive action in Washington forced the Chambers to a favorable vote. Subsequent events proved the correctness of his diagnosis. He recognized his inability to marshal public opinion in France, and his suggested action by Washington was vetoed. While assuring him that the President was gratified with the manner with which he had proceeded, McLane informed Livingston that "the President could not adopt your suggestion for recommending the suspending of the act of Congress executing the convention, on the part of the United States." [27]

From the opening date of the session of the Chambers, December 22, 1833, until January 13, 1834, when the bill was finally introduced, Livingston almost constantly importuned the King and remonstrated with the ministers to secure action.[28] He made an ineffectual attempt to comply with Jackson's instructions to have incorporated in the bill provisions for the payment of each installment as it fell due so that it would eliminate the "necessity of recurring again to the Chambers." [29] He kept in touch with the leading legislators and felt relieved when the com-

[26] "Extracts from Minutes, Chamber of Deputies," quoted in Washington *Globe*, August 1, 1833.

[27] McLane to Livingston, December 11, 1833, in *Register of Debates*, 23 Cong., 2 Sess., Appendix, 111–12.

[28] Washington *Globe*, October 13, 1834.

[29] McLane to Livingston, December 11, 1833, in *Register of Debates*, 23 Cong., 2 Sess., Appendix, 111-12.

mittee reported March 10 and recommended the adoption of the bill.[30] He kept informed as to the tactics of the opposition and feared the effect of the propaganda for a "new negociation [*sic*] to produce a smaller indemnity." [31] He knew that the vote would be close but, as the opposition failed to advance new arguments during the five days' debate, March 28–April 1, he was hardly prepared for the rejection by the vote of 176 to 168.[32]

The Washington government had failed to provide for such contingency and Livingston was without instructions. A less discreet man would have demanded his passports, which would have aggravated the situation further. In discussing the problem with a friend as to "the course which it might be advisable to adopt," he stated that he would wait for further instructions before he acted. He declined the suggestion to demand his passports provisionally for the effect "of eliciting a request from the French Government" for him to "continue to be accredited for the purpose of forming a new treaty." He refused to adopt such policy even though he was informed of Broglie's expressed apprehension of the effect in the provinces which a rupture with America would create.[33]

Livingston was tired. The strain of the legislative session and his recurring spells of illness had left him exhausted, but he refused to leave Paris for the moment. He resented "that nothing was done [in the] last congress" [34] and the delay of instructions from Washington proved

[30] Washington *Globe,* October 13, 1834.

[31] Livingston to Jackson, June 23, 1834, in Jackson Papers, LXXXVI, 17,555–57.

[32] Washington *Globe,* October 13, 1834.

[33] George M. Gibbes to Rives, April 2, 1834, in Van Buren Papers, XX, 4466–67.

[34] Jackson to Van Buren, October 27, 1834, in Bassett (ed.), *Correspondence of Andrew Jackson,* V, 303.

embarrassing. He was desirous of knowing "in what tone" he was to be "authorized to speak to the French government on the subject of their breach of faith." If it were "decided to do nothing," he wrote Jackson, he would "regret it very much," yet, if he knew it, at least "the merit of moderation and forbearance" might be claimed.[35] The elections for the Chamber of Deputies were being held. While hopeful as to the election results, he felt that an extended absence from Paris at that time was inadvisable. He maintained that since no decision would be forthcoming before the end of the next session of Congress, Jackson should urge that body to pass a law "suspending importations" until he received "satisfactory evidence that the treaty" had been complied with.[36]

The French government also was quite concerned. It feared that the President would request "Congress to decide upon the measures to be pursued." The King assured Livingston of his keen regret at the action of the Deputies and dispatched a *corvette* to America with instructions to Sérurier to explain the conditions to Jackson. The President was to be informed that, as soon after the elections as the charter would permit, the Chambers would be summoned, the appropriation would be pressed, and he would be informed of the results in time for him to communicate the facts to Congress "before March 4, next." [37]

As time passed the situation appeared less critical to Louis Philippe and his ministry, especially since the American government did not seem inclined to resort to vigorous measures. The President had accepted Sérurier's

[35] Livingston to Jackson, July 14, 1834, in Jackson Papers, LXXXVI, 15,589–91.

[36] *Id.* to *id.*, June 23, 1834, *ibid.*, 17,555–57.

[37] Washington *Globe*, October 13, 1834.

statement "that everything permitted by the constitution is to be done to hasten the period of presenting the law" to the Chamber of Deputies and had made no report on the situation to Congress. American public opinion regarding the treaty rejection as recorded in the Washington papers did not indicate the necessity of vigorous action by the ministry. Compte de Rigny, now minister of foreign affairs, continued the Broglie policy of evasion and delay. Effort was made to discredit American institutions not only in France but also throughout Europe, and the question of a new treaty providing for a smaller indemnity was agitated.[38]

When Jackson's instructions of June 27 arrived informing Livingston that "on all occasions" he must use candor in his communications with the French government and "that the treaty, on their part, must be fulfilled," [39] the Minister promptly lodged a protest with Rigny. On July 26 he wrote Rigny that further delay would be "irritating" and expressed the hope that the question would receive the attention of "his Majesty's Government" when the Chambers convened on July 31.[40] Three days later, July 29, he informed Rigny that since the President expected the King to convoke the Chambers at an early date he was confident that the ministry would present the question during the "approaching meeting." [41] The "short session which the King will open this day," Rigny explained to Livingston, July 31, had for its "only object" that of giving the "Chambers an

[38] Livingston to Jackson, June 23, 1834, in Jackson Papers, LXXXVI, 17,555–57.

[39] Jackson to Livingston, June 27, 1834, in Bassett (ed.), *Correspondence of Andrew Jackson*, V, 271–72.

[40] Livingston to Compte de Rigny, July 26, 1834, in *House Documents*, 23 Cong., 2 Sess., No. 40, p. 55.

[41] *Id.* to *id.*, July 29, 1834, *ibid.*, 56.

opportunity of organizing themselves"; consequently, the "Legislature" would be prorogued immediately as it was impossible to keep it in session out of season.[42]

Livingston was not satisfied with Rigny's attitude, and on August 3 he reminded him of Sérurier's pledge to the President that " 'everything permitted by the constitution' " would be done to accelerate the presentation of the law to the Chambers. It was because of this pledge, said Livingston, that the President had refrained from presenting the matter to Congress. If Sérurier's statement reflected the attitude of the government, then why refuse to present the law to the Chamber of Deputies for its decision so that the President could report its action to Congress in December. "It might," he concluded, "be expected that the personal conveniences of the members of the Legislature, or even some degree of national interest, ought to give way to the strong exigencies of such a case." [43] But Rigny refused to admit that Sérurier's remark constituted a pledge and informed Livingston that the *projet de loi* could not be presented to the Chambers as they were to "be immediately prorogued." The King, furthermore, could not call a special session merely to consider this subject, but it would be presented "as soon as possible" during the winter session.[44]

Livingston knew that the Chambers would not meet in regular session until three weeks after Congress had convened. He appealed personally to Louis Philippe and the King promised him "to convene the chambers in October or the Irst of November." [45] But upon his return to Paris following his short visit to Savoy for his health,

[42] Rigny to Livingston, July 31, 1834, *ibid.*, 57.

[43] Livingston to Rigny, August 3, 1834, *ibid.*, 57–59.

[44] Rigny to Livingston, August 7, 1834, *ibid.*, 59–61.

[45] Jackson to Van Buren, October 27, 1834, in Bassett (ed.), *Correspondence of Andrew Jackson*, V, 303.

Livingston learned that the King had no intention of complying with his pledge to convene the Chambers before their regular meeting date. He was outraged at the King's conduct and concluded that he and his ministers were acting hypocritically in that they did "not want the Treaty carried into effect" and were attempting "to throw the responsibility upon the Chambers." [46] Unable to locate the source of the propaganda for a new treaty, Livingston determined to disavow officially the possibilities of such action. On October 14 the Paris *Constitutionel* stated that it had "been authorized by Mr. Livingston to declare, that he has received no instructions from the Government of the United States to agree to any compromise whatever, relative to the claims of France; and, further, that Mr. Livingston is sure no such instructions will be transmitted to him." [47]

Livingston's efforts to effect a satisfactory adjustment of the difficulties were counteracted by conditions in America as well as in France. In spite of the President's avowal that he could not "recommend a war thro' the Custom Houses," [48] Livingston still was convinced that only a show of force by Washington would conclude the issue. He knew, what others recognized later, that "the real spring to touch is the commerce of the country." [49] The question remained as to how he could stir the President to action and overcome the indifference of the American public.

[46] *Ibid.*

[47] "News item in Paris Constitutionel," quoted in Washington *Daily National Intelligencer,* November 20, 1834.

[48] Jackson to Livingston, June 27, 1834, in Bassett (ed.), *Correspondence of Andrew Jackson,* V, 271–72.

[49] "Extract of a letter of February 1, 1835, to the Editor of the New York American," quoted in Washington *Daily National Intelligencer,* March 10, 1835.

Livingston's next move was well timed. Shortly before Congress was to convene he had an interview with the King and was convinced that he was "sincere." On November 22 he wrote John Forsyth, who had succeeded McLane as secretary of state on July 1, 1834, that only a manifestation of "a strong national feeling on the subject" in America would force action in Paris. "*This is not mere conjecture,*" he informed Forsyth, "*I know the fact.*" He reiterated that the moderate tone of the President's messages had convinced the French politicians "that he would not be supported in any strong measure by the people." "You may imagine," he concluded, "the anxiety I shall feel for the arrival of the President's message. On its tone will depend very much, not only the payment of our claims, but our national reputation for energy." [50]

Not only did Livingston attempt to arouse Jackson to positive action, but he endeavored to exert pressure on the ministry. Without specific authority, he informed the ministry of the serious consequences that might be expected from another rejection of the law and of the firm determination of the government of the United States "to admit no reduction or change in the treaty." On December 6 he informed Forsyth of the good "effect" of the "message" and that his hopes had "increased." The King and the ministers assured him that they were in earnest and some of the deputies seemed "now convinced that the interest as well as the honor of the nation" required "the fulfillment of their engagements." [51]

A little later Livingston's optimism had given way to fear and he awaited hopefully the arrival of the presi-

[50] Livingston to Forsyth, November 22, 1834, in Richardson (ed.), *Messages and Papers of the Presidents,* III, 130–31.

[51] *Id.* to *id.,* December 6, 1834, *ibid.,* 131.

dential message. The tone of the press and conversations with both Louis Philippe and his ministers, he informed Forsyth, had convinced him that the ministry was "not willing to put their popularity to the test" on the subject of the claims. "It will not," he said, "be made one on the determination of which the ministers are willing to risk their portfolios." This decision not to make it a cabinet question, however, "will not be without its favorable operation," for the leaders of the opposition will then hesitate to take the responsibility of a rupture between the two nations. As it was not prudent, he would not "press the decision before the next month." [52]

In the meanwhile, Jackson's strong-toned message, which would precipitate a crisis when it arrived in Paris, was sent to Congress December 1, 1834. The greater part of it was an accurate recital of facts, but it closed with the request for authority to make reprisals on French property in the event the Chambers at their next session failed to provide for the required appropriation. "This remedy," he said, "has been repeatedly resorted to, and recently by France herself toward Portugal, under circumstances less unquestionable." France ought not to consider "such a measure" a menace. "Her pride and power," he continued, were "too well known to expect anything from her fears" and it should be unnecessary for him to declare that no "intimidation is intended by us." [53]

Livingston interpreted the arrival of Jackson's message in Paris during the early morning of January 8 as a "good omen." [54] The excitement that followed, however, was intense and even Livingston was momentarily

[52] *Id.* to *id.*, December 22, 1834, *ibid.*, 131–32.

[53] Richardson (ed.), *Messages and Papers of the Presidents*, III, 106–107.

[54] Livingston to Jackson, January 15, 1835, in Jackson Papers, LXXXIX, 18,217–18.

stunned. Three days later, January 11, Livingston reported to Forsyth that he feared the "greatest sensation" which it had caused might deter the ministry from recommending the appropriation. "This feeling," he said, was "fostered by the language of our opposition papers, particularly by the Intelligencer and the New York Courier, extracts from which have been sent on by Americans, declaring them to be the sentiments of the majority of the people." These extracts, you understand, "are translated and republished here, with such comments as they might have been expected, and undoubtedly were intended to produce." He was of the opinion that "if hostilities should take place between the two countries, those persons may flatter themselves with having the credit of a great share in producing them." Livingston's opinion, however, was that "the energetic language of the message" would "have a good effect." He was confident that "as soon as the first excitement subsides, it will operate favorably on the Councils of France." Already some of the journals had begun "to change their tone" and he would be much mistaken "if the opposition here, finding that we are in earnest, will incur the responsibility of a rupture between the two nations," which they recognized would follow should the treaty be rejected.[55]

The Gallic pride was "deeply wounded" at what was considered an attempt to coerce by threats [56] and on every hand protests were heard against making provision for the payments. Livingston was largely responsible for the situation, for he had recommended that the President assume a forceful attitude in his message. He knew that

[55] *Id.* to Forsyth, January 11, 1835, in *Register of Debates*, 23 Cong., 2 Sess., Appendix, 164–65.

[56] *Ibid.*

should his recommendation be accepted, Jackson would act in his typically vigorous manner, but he had miscalculated the reaction of the French people. Events moved swiftly. On January 13 a crisis developed which gave evidence of being "the first preliminaries to actual hostilities." [57] At the request of Rigny, Livingston personally delivered to him a copy of the message. During the conference, Livingston, while expressing his regret at the communication having been misrepresented "as a measure of hostilities," pointed out to Rigny that the message was "a consultation between different members of our Government," and was not "addressed to the French nation." [58] It was most unfortunate, he added, that in view of Sérurier's promise the Chambers had not been convened earlier. Rigny was noncommittal, but he seemed to attach serious importance to the intimation of bad faith.

The conference was friendly, and that evening at the "Austrian Ambassador's" Rigny's pleasant manner gave no indication of the serious step that the French government had taken. In fact, he was agreeable to Livingston's request of delaying "the note recapitulating the conversation" of the morning until after the "arrival of the packet of the 16th." Naturally, Livingston "was quite surprised" to receive later the same evening a communication from Rigny announcing the withdrawal of Sérurier [59] from Washington and informing him that his passports were at his disposition. General Jackson's comments on the failure to convene the Chambers served as the excuse

[57] Paris *Nationale,* January 13, 1835, quoted in Washington *United States Telegraph,* February 23, 1835.

[58] Livingston to Forsyth, January 14, 1835, in *Register of Debates,* 23 Cong., 2 Sess., Appendix, 165–66.

[59] *Id.* to Jackson, January 16, 1835, in Jackson Papers, LXXXIX, 18,220–21.

for him to announce that His Majesty had "considered it due to his own dignity no longer to have his minister exposed to hear language so offensive to France." [60]

Rigny's unexpected move placed Livingston on the defensive. Without warning Livingston was confronted with an "embarrassing situation" that required his immediate decision and prompt action. He was ill prepared to meet this "perplexing" exigency. His own Department of State had neglected to make preparations for such contingency and he was without instructions concerning his actions in the emergency. He had received no letters from Washington "since the meeting of Congress" and his only knowledge of "the course of events of public opinions, and governmental designs" had been gleaned "from the mass of party trash in the gazettes." [61] Time was not wasted in the useless censure of his government for its negligence, but rather was utilized to formulate a plan of action which would "preserve peace between the two nations." [62]

Livingston had been instructed to secure the execution of the treaty, and, regardless of personal feelings, he realized he could not allow any act of his to jeopardize the success of his mission. Before deciding upon his course of action, the question must be considered carefully from all angles. He immediately disregarded the first impulse to demand his passports and leave, for that would "give to the French Government the advantage." [63] He must re-

[60] Rigny to Livingston, January 13, 1835, in *Register of Debates*, 23 Cong., 2 Sess., Appendix, 166–67.

[61] Livingston to Van Buren, January 29, 1835, in Van Buren Papers, XXXI, 4767–68.

[62] *Id.* to Jackson, January 16, 1835, in Jackson Papers, LXXXIX, 18,220–21.

[63] *Id.* to Forsyth, January 15, 1835, in *Register of Debates*, 23 Cong., 2 Sess., Appendix, 167.

verse the situation with Rigny and place him again on the defensive. In the "cynical terms" of the Rigny note, he sensed the fine Machiavellian hand "of that wily old diplomat Talleyrand." He detected its twofold design; first, to convey the impression both in Europe and America of the great vigor of the Washington government; and second, to interpret his demand of passports as a voluntary act. Both objects must be defeated.

The message had embarrassed the French greatly and they wanted to hide their faults by "an affected sense of injured dignity." [64] The French government was "not settled on any firm basis" and the Chambers had "neither dignity, energy, nor influence." The King had had to grant concessions to the Deputies for their support which had resulted in an encroachment upon his prerogatives. In the hope of a restoration, the opposition papers were attempting to "goad the Chambers" into a rejection of the law.[65] Considering the political conditions, the President's strong language might force the French ministry to act provided he could not be accused of "breaking up diplomatic intercourse between the two countries" which "might precipitate war." [66]

Following a long and sleepless night, Livingston spent most of the day framing his reply to Rigny. The French Minister was informed that, unless his letter was intended as a dismissal, he would "not take upon himself the responsibility" of the consequences in asking for his passports. He could take no directions, follow no suggestions but those of his own government and he would

[64] *Id.* to Jackson, January 15, 1835, in Jackson Papers, LXXXIV, 18,217–18.

[65] *Id.* to Van Buren, January 29, 1835, in Van Buren Papers, XXI, 4767–68.

[66] *Id.* to Forsyth, January 15, 1835, in *Register of Debates*, 23 Cong., 2 Sess., Appendix, 167.

await those instructions unless directed to leave French territory. However, should he receive his passports, he would leave the responsibility "where it ought to rest," and later he would reply in full to the "grave matter" which Rigny had raised.[67] Two days afterwards Livingston informed Forsyth that the law had been presented for effecting the payment to the United States.[68] On the same day he wrote to Jackson, and with a slight touch of humor, "My note to Count de Rigny was delivered to him early yesterday and as it is now five in the afternoon and I have received no answer, I presume it has perplexed them a little—what to say as I supposed it would."[69] Rigny again was on the defensive.

Livingston was no less hampered in his efforts by the political warfare in France than he was by the fight the Whigs were waging against Jackson at home. Not only in Congress but also in their press, the attitude of the Whigs had given encouragement to the enemies of the treaty in France. Especially had the "insidious" articles appearing in the *Intelligencer* and the New York *Courier*[70] been effective in creating the impression that Jackson would not be supported by "congress or the people of the United States."[71]

In the Senate the Whigs' first move was to gain control of the Committee on Foreign Affairs. In this they were successful when they secured the appointment of Clay, W. P. Mangum, and Peleg Sprague. The *Globe* maintained that there were not three men in the French Chamber more anxious to thwart Jackson than the three

[67] *Id.* to Rigny, January 14, 1835, *ibid.*, 167–68.

[68] *Id.* to Forsyth, January 16, 1835, *ibid.*, 168.

[69] *Id.* to Jackson, January 16, 1835, in Jackson Papers, LXXXIX, 18,220–21.

[70] *Id.* to *id.*, January 15, 1835, *ibid.*, 18,217–18.

[71] Washington *Daily National Intelligencer*, December 12, 1834.

men [72] on this committee to which was referred that portion of the message dealing with the French affair. While the drawing of the draft was not in accordance with diplomatic usages, and while probably every means had not been exhausted to secure a peaceful solution of the problem, Clay's actions were reprehensible. In offering the majority report that "it is inexpedient at this time" to grant authority for reprisals, Clay bordered on disloyalty when he suggested that if France were prudent she would wait to see whether the message should be seconded by the Congress. His suggestion that France might make the appropriation conditional on an "explanation" from the President was understood by the French government.[73] When the Senate approved his resolution, the Chambers were convinced that the recommendation of the President was "his own act only." [74] The opposition went so far as to criticize the Administration for Forsyth's refusal to confer with Sérurier following the arrival of his notice of recall. It clearly indicated the warlike attitude of Jackson, they contended, when the Secretary, in refusing the interview, had tersely informed Sérurier he was "ready to receive in writing any communication the Government of France desires to have made to the Government of the United States." [75]

For sixteen days following the receipt of Rigny's communication of January 13, Livingston was occupied in writing the formal reply which he had promised Rigny in the earlier answer. With a logic surpassing that em-

[72] Washington *Globe,* December 17, 1834.

[73] *Register of Debates,* 23 Cong., 2 Sess., 104–105.

[74] Washington *Daily National Intelligencer,* December 15, 1834.

[75] Forsyth to Sérurier, February 23, 1835, in *Register of Debates,* 23 Cong., 2 Sess., Appendix, 169.

ployed by Jackson himself in his own defense, Livingston defended the President's method of addressing France through the medium of messages to Congress. He rebuked Rigny for referring to the President as "General Jackson" in official communications and firmly reiterated the charge of broken faith in the matter of Sérurier's pledge. He definitely refuted the accusation that Jackson, purposely, had misrepresented the question concerning the calling of the Chambers. "You hide," he said, behind the veil of "'fixed principles of the constitutional system'" but "there is no regular form of administration" that would have precluded a meeting of the Chambers at an early date. For "neither constitutional impediment, nor stern inflexible usage" had prevented the issuance of a call "at any time" that His Majesty's government had deemed advisable. The present session, he pointed out, had convened three weeks earlier than the regular date, even though Rigny himself had declared such action was impossible. French chauvinism, he warned in conclusion, had been carried too far "when it becomes impatient of just complaint; when it will allow none of its acts to be arraigned, and considers as an offence a simple and correct examination of injuries received, and as an insult, a deliberation on the means of redress." [76]

On February 13 Forsyth informed Livingston that, if the French Chambers again rejected the appropriation bill, a frigate would be dispatched immediately to convey him home.[77] Not until the middle of March, however, was Livingston's "anxiety" relieved by the ar-

[76] Livingston to Rigny, January 29, 1835, *ibid.*, 273–77.

[77] Forsyth to Livingston, February 13, 1835, in Richardson (ed.), *Messages and Papers of the Presidents,* III, 143.

rival of instructions from Washington carrying with them full approval of his conduct.[78] Jackson's personal letter of commendation expressing his "delight" with the Minister's reply to Rigny did not arrive until April 12. In the meanwhile, many events had occurred that had added to Livingston's difficulties. The President's transmittal to Congress of Livingston's official correspondence with his government had proved most embarrassing, as all the Livingston letters were reprinted in the Paris press. Even though he "approved" of the President's action,[79] it had ended his usefulness in Paris.[80] On February 14 the French ministry had been dissolved and for a month the handling of the important treaty question was assigned to M. Desmousseaux, an assistant commissioner.[81] The return of Broglie to the Department of Foreign Affairs, March 13,[82] was interpreted as favorable to the payment of the indemnity. The opposition press admitted that the new ministry and the treaty "must stand or fall together" as the temper of the Chamber of Deputies was unfavorable to any further changes in the ministry.[83]

Realizing that the duration of his ministry depended upon a successful disposition of the question, Broglie

[78] *Id.* to *id.*, February 24, 1835, *ibid.*, 143–44.

[79] Livingston to Jackson, April 12, 1835, in Jackson Papers, XC, 18,496–97.

[80] "By the publication of Mr. Livingston's correspondence, the Government of the United States had excited such a feeling of irritation against him that it would have been out of our power . . . to avail ourselves of a document bearing his signature." Broglie to A. Pageot, June 17, 1835, in Washington *Daily National Intelligencer*, January 22, 1836.

[81] *Ibid.*, April 9, 1835.

[82] Paris *Moniteur*, March 13, 1835, quoted in *ibid.*, April 14, 1835.

[83] "If the treaty is not accepted, it will be not M. Broglie alone, but the whole Ministry that must go out." *Journal des Debats*, March 13, 1835, quoted in *ibid.*, April 14, 1835.

made an earnest and energetic effort to secure the execution of the treaty. In order to afford a ministerial explanation of the crisis, the bill for the indemnity was made the order of the day in the Chamber of Deputies, March 28. At last the pressure from the commercial, manufacturing, and agricultural interests in the provinces was being felt. However, the opposition made every attempt to embarrass Broglie. In replying to a member of the opposition on March 30, Broglie maintained that "General Jackson's" message was not to be regarded in the light of a public act but rather a "mere expression of an Executive officer" since it had been disapproved by the American government. It was an error, he stated, to accuse Livingston of attempting to intimidate France, and since it was shown that France owed the United States the sum of twenty-five million francs, it was the duty of the Chambers to enable the government to fulfill its engagements. Sensing his advantage, and in order that the full purport of his remark might be gained, discussions were postponed immediately following his statement that the money would not be paid "should the interests or dignity of France be compromised" by the American government.[84]

If Louis Philippe had his troubles with the Chamber of Deputies, Jackson had his difficulties with Congress. The militant French newspapers reached the United States and their boasting,[85] sword-rattling articles, coupled with the report that the French squadron was to visit the American coast, were not conducive to calming the friends of the President. Under these ominous

[84] Washington *Daily National Intelligencer,* January 22, 1836; *Archives Parlementaires de 1787 à 1860,* XCIII (1835), 655–751; XCIV (1835), 395 ff.

[85] Benton, *Thirty Years' View,* I, 590–93.

conditions, the House of Representatives, where the Jacksonites were in majority, began its discussion of the crisis. The majority report and resolutions declared against further negotiations and favored preparations for war.[86] Surprisingly, Adams, the Whig, was the special champion of the President in the fight against a compromise.[87] Following the acrimonious debates, the resolution which was adopted was a compromise between that which the committee had introduced and the ideas of Adams. The compromise provided for the maintenance of the treaty and for preparations for war as expressed in the Fortifications bill.[88]

On the last day of the session, during the consideration of this bill, an amendment was offered in the House appropriating $3,000,000 to be used, at the discretion of the President, in case France should declare war during the recess of Congress.[89] Although it met with no opposition in the House, it was vigorously opposed in the Senate. Webster's proposed disposition of the amendment with a motion to "adhere" to the Senate measure brought protests from Buchanan and Rufus King.[90] But the appeals to provide protection against invasion by the enemy and to save the national character from disgrace were futile. By a strict party vote, the motion to adhere was adopted [91] and in the conference between the representatives of the two chambers, the House was forced to accept the Senate's terms. Only $300,000 for arming the fortifications and $500,000 for repairs and equipping of war vessels were provided, "an amount wholly inadequate if it should be required, and more than necessary if it should not."

[86] *Register of Debates*, 23 Cong., 2 Sess., 1515–17.
[87] *Ibid.*, 1517, 1532–37, 1565, 1571, 1622–30.
[88] *Ibid.*, 1010–18.
[89] *Ibid.*, 730.
[90] *Ibid.*, 734–35, 738–39.
[91] *Ibid.*, 744. The vote stood 29 to 17.

The failure of the passage of the Fortifications bill did not weaken Jackson's determination to maintain the rights of the nation. Two days after Congress adjourned, Forsyth instructed Livingston to demand an explanation or a qualification of the insinuation in Sérurier's note of withdrawal that the President had knowingly made a misrepresentation in his message to Congress.[92]

The action of Congress was reflected in the deliberations of the French Chamber of Deputies. The debates on the indemnity law, which began April 9, "continued with increasing violence and misrepresentation" for more than a week.[93] "The insult of President Jackson comes from himself only," said Henri de Chaubaulon. "This is more evident from the refusal of the American Congress to concur with him in it." Had the United States sustained General Jackson we would "have had to demand satisfaction, not from him, but from the United States" and would have had to teach the Americans that "France knows the way to Washington as well as England." Boasting of the ease with which France could crush the United States, "Mons. Rancé was so elated" that he declared, "When the Americans see this long sword, believe me, gentlemen, they would sooner touch your money than dare to touch your sword."[94] Despite the denunciations, the insults, and ridicule, Livingston wrote Jackson, April 16, that he had every reason to believe the law would pass.[95]

Two days later, Saturday, April 18, the Chamber of

[92] Forsyth to Livingston, March 5, 1835, quoted in Washington *Daily National Intelligencer*, January 21, 1836.

[93] Livingston to Jackson, April 12, 1835, in Jackson Papers, XC, 18,496–97.

[94] Benton, *Thirty Years' View*, I, 591–93.

[95] Livingston to Jackson, April 16, 1835, in Jackson Papers, XC, 18,496–97.

Deputies by a vote of 289 to 137 passed the appropriation bill with the payment contingent upon an apology or an explanation from President Jackson.[96] The provisions of the act again placed Livingston in an "unpleasant predicament." His instructions, which had directed him to return to America should the appropriation be rejected or to retire to England or Belgium should the action be favorable, failed to cover the situation. Relying upon his own judgment, he decided to demand his passports, leaving his son-in-law Barton as chargé d'affaires, and to return home.

The same day that the Deputies passed the appropriation bill, Livingston called upon Broglie for an explanation of Sérurier's note in which it was insinuated the President had been guilty of knowing misrepresentation.[97] Although he failed to receive an answer before his departure, he informed Forsyth that when given, the answer would be satisfactory.[98] The day before his departure, he signed a convention with Broglie by which a life annuity of $120 would be paid by the United States either to the disabled French seamen or the families of those accidentally killed the previous year by the firing of a salute from an American ship.[99] On April 25 once more he addressed Broglie in an attempt to maintain friendly relations between the two nations. He endeavored to convince him that to a large degree the injured feelings of the French had been caused by a

[96] London *Times,* April 21, 1835, quoted in Washington *Daily National Intelligencer,* May 29, 1835.

[97] Livingston to Broglie, April 18, 1835, quoted in *ibid.,* January 21, 1836.

[98] *Id.* to Forsyth, June 29, 1835, in Richardson (ed.), *Messages and Papers of the Presidents,* III, 184.

[99] Galignani's *Messenger* (Paris), April 30, 1835, quoted in Washington *Daily National Intelligencer,* June 18, 1835.

"failure to understand the nature of the United States Government." After reviewing the form and functions of the government, he pointed out that the President, as chief executive power, had to have free communication with the co-ordinate powers of government. As the President could not be called on for an explanation, Livingston, hoping to preserve peace, had given one on his own initiative—one which the President had approved. But that approval, Livingston maintained, "was given before he had intimation of intention to attach it as a condition to the payment of indemnity due by the treaty." Any attempt to enforce the proviso, Livingston informed Broglie, would be repelled "by the undivided energy of the nation." [100]

Four days later [101] he left Paris and on May 5 sailed from Havre for home.[102] Before the year had passed, however, Livingston indicated a desire to return to Paris.

[100] Livingston to Broglie, April 25, 1835, in Richardson (ed.), *Messages and Papers of the Presidents,* III, 178–84.

[101] *Id.* to Forsyth, June 29, 1835, quoted in *ibid.,* 184.

[102] New York *Journal of Commerce,* June 11, 1835, quoted in Washington *Globe,* June 15, 1835.

Chapter XVII

EVENTIDE

THE popular ovation accorded Livingston on his arrival in New York, June 23, more than compensated for the "contumelies of insolent Frenchmen" he had experienced in "strenuously asserting the right and honor of his country." [1] As the *Constitution* docked, an immense crowd greeted him at the wharf, followed him to the home of a relative on Greenwich Street, clamored for a speech, and thronged the City Hall at the public reception.[2] His apprehension of a none too cordial welcome vanished with the spontaneous applause that greeted his arrival at the dinner with which the city honored him on July 4.[3] At the conclusion of his brief speech the room echoed with the cries of "No Explanations!" "No apology!" and shouts of "Hurrah for Jackson!"

Not only was Livingston the guest of honor at an equally enthusiastic dinner in Philadelphia and again in New York on July 14, but the press uniformly voiced

[1] New York *Evening Post,* June 23, 1835, quoted in Washington *Globe,* June 26, 1835.

[2] New York *Journal of Commerce,* June 23, 1835, quoted in Washington *Daily National Intelligencer,* June 26, 1835.

[3] New York *Times,* July 5, 1835, quoted in Washington *Globe,* July 13, 1835.

its approval of his actions in France.[4] The *Globe* was pleased to quote in full the editorial of the New York *Evening Post* which, in part, stated that "the names of few men are recorded in our history whose lives have been of more real service to the republic than Mr. Livingston. Identified from his youth upward with the party which professes the political principles of Jefferson, the whole tenor of his public conduct has been to illustrate and advance those principles. . . . The learning of Mr. Livingston, the force of his eloquence, the comprehensive reach and unanswerable cogency of his writings, did much to accomplish the ultimate triumph of democratic principles, a result so auspicious to the cause of equal freedom." [5]

Livingston was guarded in his statements to the press representatives and assured them that his return was "not to be taken as an evil omen." It was prompted by "the desire to put the President in possession of his views more fully" than could be done by letter. There was nothing "to shake" his confidence that the affairs with France would be brought "to a satisfactory and friendly issue." [6]

While still aboard the *Constitution,* Livingston had prepared two reports: one, official in content, for the Secretary of State; the other, personal in nature, for his friend the President. To Forsyth, he rendered an ac-

[4] "Not a faction of a party, not an individual even, venturing a word in favor of further concession; all professing a determined resolution to support the government in any measure that the dignity of the nation may require. I can truly say I have never witnessed such entire unanimity on any public question." Livingston to Jackson, July 11, 1835, in Jackson Papers, XCI, 18,793–94.

[5] New York *Evening Post,* June 23, 1835, quoted in Washington *Globe,* June 26, 1835.

[6] New York *Journal of Commerce,* June 23, 1835, quoted in Washington *Daily National Intelligencer,* June 26, 1835.

counting of the last days of his stewardship. He enclosed a copy of his last note to Broglie and justified his position in regard to "the extraordinary condition annexed to the [French] law for executing the treaty." Since he had left Paris almost immediately after the delivery of his note of April 25 to Count de Broglie, he could not, he explained, "form any correct judgment of the effect" it might have produced. He had reason to believe, however, that it "produced some embarrassment and regret that the assent of the minority had been so readily given." His immediate departure had been prompted by the desire "to show more decidedly the serious light in which this condition would be considered in the United States." [7]

In his letter to Jackson, Livingston explained the motive of his last note to Broglie in which he had made the "final appeal to the justice of the French Government." The letter was written, he assured the President, to counteract any use the opposition might "make of the conditions annexed to the law" and to show that the American Executive, without sacrificing "national dignity," had done "everything to avoid a rupture that the most moderate counsels could suggest." While the praise of the general public was gratifying to Livingston, he was "very anxious" to receive the approval of the "General" [8] and departed for Washington at the earliest moment possible.

On June 26, three days following his arrival in New York, Livingston was at the White House in conference with Jackson.[9] "The principal business" with which

[7] Livingston to Forsyth, June 21, 1835, in Redmond Papers (Manuscripts Division, New York Public Library).

[8] *Id.* to Jackson, June 22, 1835, in Jackson Papers, XCI, 18,745–46.

[9] Richardson (ed.), *Messages and Papers of the Presidents,* III, 193.

he was charged having been brought to a close, he wrote Forsyth on June 29 that he had concluded his services would "no longer be useful" to his country, and therefore requested that the President accept his "resignation of the trust" with which he had been honored.[10] President Jackson, so wrote the Secretary the day following, could not allow him "who have been so long and usefully employed in public service," to resign "without an expression of his regard and respect, the result of many years of intimate association in peace and war." Although differing on some points of general policy, the President had always known of Livingston's "singleness of purpose, perfect integrity, and devotion" to his country. His conduct "in the embarrassing and delicate position" which he had lately occupied and especially his last official note in closing his "correspondence with the French Government" had met with the President's "entire approbation." The President was persuaded that Livingston would "carry into a retirement which he trusts may be temporary" the consciousness not only of having performed his duty, but of having realized the anticipations of his fellow citizens and secured for himself and his country "the just appreciation of the world." [11] On his return home, Livingston wrote Jackson that his "kind and affectionate reception" would have been without satisfaction had it not been "combined with your approbation of my public conduct." [12]

On the basis of Livingston's report, Forsyth drafted his instructions to Barton, in Paris. The Rothschilds, he said, had been authorized by the Treasury Depart-

[10] Livingston to Forsyth, June 29, 1835, *ibid.*, 184.

[11] Forsyth to Livingston, June 30, 1835, *ibid.*, 185.

[12] Livingston to Jackson, July 11, 1835, in Jackson Papers, XCI, 18,793–94.

ment to receive the money from France. They would notify the French government of this fact, but would make no demand. Barton was to return home should France reject the bill of indemnity. However, if the legislature of France placed the money at the disposal of the King, conditionally, he would await further orders, "but maintain a guarded silence on the subject of the indemnity." [13] Finally, in September, Jackson determined to press the issue to a decision. Forsyth sent instructions to Barton. If no steps had been taken to pay the indemnity, the chargé was to call upon Broglie and ask for a definite answer. If the money was not paid in three days, he was to make a last formal demand for it; if it was not then paid within five days, he was to demand his passports, close the legation, and come home. This was to be done in time to permit the result to be communicated to Jackson before he prepared his message for the opening of Congress.[14] In the latter part of October, Barton complied with his instructions,[15] but the only reply of the ministry was that they were ready to pay the money as soon as the United States would declare that they " 'did not intend to call in question the good faith of His Majesty's Government,' etc." [16] Naturally, Barton could not make such concession and on November 6 he asked for his passports, and three weeks later left Paris.[17]

In September, when A. Pageot, chargé in Washington, offered to communicate to Forsyth the French law disposing of the matter, he read, also informally, a letter

[13] Forsyth to Thomas P. Barton, June 28, 1835, in Richardson (ed.), *Messages and Papers of the Presidents*, III, 193–94.

[14] *Id.* to *id.*, September 14, 1835, *ibid.*, 194.

[15] Barton to Broglie, October 24, 1835, *ibid.*, 194–95.

[16] Broglie to Barton, October 26, 1835, *ibid.*, 196–97.

[17] Barton to Broglie, November 6, 1835, *ibid.*, 197.

explaining the case and defending his government. It declared that the ministry sincerely desired to execute the treaty. In regard to Jackson's contention that a foreign government could no more notice a President's message than a committee report in Congress, France did not demand a categorical denial but only assumed that a disclaimer would be made, and had suspended action until it came. With the remark that he could make no use of the proffered copy for the information of the President, Forsyth declined to receive it, and thereby still further injured the feelings of the French officials.[18]

Jackson's message to Congress in December, 1835, showed careful treatment. With restraint he reviewed the history of the French affair and justified his actions. He also made a specific denial of any intention "to menace or insult" France. As France now through all branches of her government had acknowledged "the validity of our claims" and obligations of the treaty of 1831 there existed no adequate cause for further delay of its execution. He hoped that France would soon adopt "the course which the interests of both nations, not less than the principles of justice, so imperiously require." The principle involved in the controversy, however, was so vitally important to the independent administration of the government "that it can neither be surrendered nor committed without national degradation." The honor of his country would never be stained by an apology from him "for the statement of truth and the performance of duty." [19]

Before Congress had convened, Pageot on December 1, 1835, sent a letter to Forsyth enclosing a copy of the Broglie dispatch which the Secretary had previously

[18] *Ibid.*, 198–201. [19] *Ibid.*, 152–60.

declined to receive.[20] Forsyth again returned the dispatch stating that the President did not approve of Pageot's unusual diplomacy. However, he did not wish his silence to be interpreted as admitting the accuracy of the contents of Broglie's dispatch.[21] Pageot expressed his "astonishment" and intimated that Forsyth was more interested in diplomatic forms than in settling the dispute.[22] The French chargé requested his passports on January 2, 1836,[23] and thus completely severed diplomatic relations between the two governments.

Livingston was concerned over the warlike attitude of the two nations and attempted to forestall precipitate action by Jackson should Barton's report prove to be particularly provocative. Expecting Barton's arrival in late December, Livingston wrote the President he had no doubt that there would be "a peremptory refusal to pay unless a direct apology" were made to the French government. Tactfully he pointed out that should his anticipations be well founded it precluded all idea of Jackson's "late message being satisfactory," but such action on the part of France would "unite the nation in the support of such measures as the exigence of the case" required. This should not be a declaration of war for the state of the navy and the coast defense at the moment were not such as to justify the "confidence in them as would be necessary in case of an immediate collision." He reminded Jackson that more than a year would be necessary to "enable us to enter into the contest with proper preparation." The proper course to pursue in showing "a just resentment for the ill faith of

[20] Pageot to Forsyth, December 1, 1835, *ibid.*, 198–99.
[21] Forsyth to Pageot, December 3, 1835, *ibid.*, 199–200.
[22] Pageot to Forsyth, December 5, 1835, *ibid.*, 200–201.
[23] *Id.* to *id.*, January 2, 1836, *ibid.*, 201.

France" would be the adoption of the policy of strict nonintercourse which he had recommended while still in France. This policy pursued for a year or more would "be preferable to reprisals" until the Navy and Ordnance departments had been brought up to their full strength.[24]

In January, 1836, Barton reached New York and hastened to Washington where Livingston and Webster were representing the city of New Orleans in a suit against the United States in the Supreme Court.[25] It was with no little anxiety that Livingston, Forsyth, and Van Buren accompanied Barton to the White House. The three older men, all of whom at some time had had charge of foreign affairs, were concerned over the effect of the report on Jackson. Their apprehension did not escape the notice of Barton who inquired of them: "Well, Gentlemen, shall it be oil or water?" "Oh, water by all means!" they exclaimed in unison. Not even to Livingston had his son-in-law indicated the nature of the report he was to make. Pressing the former minister's hand as a token of appreciation of his confidence, Barton led the way into "the room of the President." Immediately after the interview, Jackson began the preparation of his message to Congress, and, upon its completion submitted it to Livingston.[26]

Livingston's efforts to induce Jackson to soften the tone of the message were successful. He prepared a substitute and sent it to the White House with an ingratiating letter on January 11. "The message about to be

[24] Livingston to Jackson, December 27, 1835, in Jackson Papers, XCII, 19,221–22.

[25] Hunt, *Life of Edward Livingston*, 427–28.

[26] Washington *Daily National Intelligencer*, January 11, 1836, stated, "It is known that Mr. Livingston, our late Minister to France, is in the city for the purpose of advising with the Executive on this subject."

delivered," he told Jackson, "is one of no ordinary importance: it may produce war or secure peace." The draft "you did me the honor to show me would make an admirable manifesto or declaration of war; but we are not yet come to that. The world would give it that character; and, issued before we know the effect of the first message, it would be considered as precipitate." The "characteristics of the present communication," he advised, "ought, in my opinion, to be moderation and firmness. Our cause is so good that we need not be violent. Moderation in language, firmness in purpose, will unite all hearts at home, all opinions abroad, in our favor." "Warmth and recriminations," he stated, would "give arguments to false friends and real enemies, which they may use with effect against us. On these principles I have framed the hasty draft which I enclose." Jackson would with his "usual discernment determine whether it suits the present emergency. At any rate, I know that you will do justice to the motive that has induced me to offer it." [27]

The Jackson message of January 15, 1836, was not "a declaration of war" nor in any sense "violent" but rather one in which the "moderation in language" was equaled by its "firmness of purpose." A further evidence of Livingston's continued influence with Jackson is noted when the President, while firmly insisting upon his position, suggested to Congress that if the money were not paid, the United States should exclude French ships and goods from American ports.[28]

The sober judgment of wise counsels in both America and France prevailed; neither nation actually de-

[27] Livingston to Jackson, January 11, 1836, in Hunt, *Life of Edward Livingston,* 428–29.

[28] Richardson (ed.), *Messages and Papers of the Presidents,* III, 188–93.

sired war; and France had accepted the pacific utterances in the message of December 7, 1835, as sufficient disclaimer. This was not known in America and before the January, 1836, message reached Paris, a settlement was practically arranged. Congress was not required "to vindicate the faith of treaties and to promote the general interest of peace, civilization, and improvement." [29] On January 27, 1836, Charles Bankhead, British chargé in Washington, offered the services of his nation to mediate the dispute and each country accepted.[30] He next announced that France was satisfied with the message of December, 1835, and would pay the money.[31] All troubles quickly disappeared and on May 10 Jackson informed Congress that four of the six installments had been paid and that cordial relations with France had been re-established.[32]

Livingston found it difficult to realize that his age and growing deafness had closed his active political career. In response to an inquiry from George M. Dallas, probably prompted by the political powers in Washington, Livingston had written his close personal and political Pennsylvania friend in November, 1835, that he could not be entirely idle while he enjoyed his "present state of health." "Sincerely and very confidentially," Dallas was informed, the position of secretary of state or the mission to England held attractions for him, but he realized there was not "any chance" of obtaining either. He would, therefore, remain where he was "watching the hues of the revolving year,—as reasonable an occupation, and probably as profitable a one, as any that political life would afford." [33]

[29] *Ibid.*, 191–92. [30] *Ibid.*, 217–18. [31] *Ibid.*, 221–22.

[32] Jackson "To the Senate and House of Representatives," May 10, 1836, *ibid.*, 227.

[33] Hunt, *Life of Edward Livingston*, 424–25.

Very shortly Livingston tired of "watching the hues of the revolving year." On February 16 he wrote Jackson enclosing a letter from Baron de Rothschild intimating that France would receive a minister and that Livingston's appointment would be agreeable. Rothschild, he was certain, "could not have hazarded this opinion without good authority." As he had received other letters that spoke "the same language," he confessed "they have raised in my mind the Desire of enjoying on the spot the triumph of your firm and energetic measures." [34] Since he failed to receive an early reply, he wrote Jackson eight days later to the effect that the many complimentary letters he had received caused him to "give full credit" to what Rothschild had said respecting his return to France. In closing his letter, Livingston again admitted he felt "the desire growing on me to enjoy on the spot your triumph and partly my own." [35] Such flattery was supposed to be most effective with Jackson, but it had lost its power in so far as Livingston was concerned. Age, absence from the scenes of action, the rise to favor of others, the opposition he had engendered in France, all were against him. Ignoring the purport of his statements, no answer was given to Livingston's strongly implied requests, thereby definitely retiring him to private life.

He bore no resentment toward anyone for his failure to be returned to Paris. In March he wrote to Jackson enclosing a letter from France which gave "the tone that the French government" had put "on their determination to yield." In this his last letter to Jackson, he discussed the various national problems with as clear

[34] Livingston to Jackson, February 16, 1836, in Jackson Papers, XCIII, 19,403.

[35] *Id.* to *id.*, February 24, 1836, *ibid.*, 19,425–26.

a grasp of their political significance as he had a decade earlier. His mind appeared to be as keen and his judgments as sound as ever.[36]

Livingston spent the winter in New York and in the early spring he returned to his country home at Montgomery Place. Here he carried on his studies, attended to his correspondence, directed the activities of the farm, continued his regular long walks, and enjoyed himself in his outdoor activities. His social life was pleasant. In May he planned a fishing trip to Long Island in company with a few friends, but during the night before his expected trip, he was taken seriously ill. His suffering was intense. Two days later, May 23, 1836, he died before the physician summoned from New York "for further medical aid" had arrived.[37]

Livingston's remains were laid in the family vault at Clermont, the place of his birth. Later they were removed and interred beside those of his second wife in Rhinebeck. In the village Dutch Reformed Church is a plain tablet bearing the simple inscription, "Edward Livingston, . . . a Man For Talents Equalled By Few, In Virtues Surpassed By None. . . ." [38]

Livingston possessed a pleasing personal appearance which revealed the aristocratic heritage of this thorough democrat who traced his ancestry back to the Scottish peerage. Careful but never fastidious in his dress, Livingston's tall, well-proportioned frame, slightly bent at

[36] *Id.* to *id.*, March 9, 1836, *ibid.*, 19,453.

[37] New York *Evening Post,* May 24, 1836, quoted in Washington *United States Telegraph,* May 27, 1836; Washington *Globe,* May 27, 1836; New York *American,* May 24, 1836, quoted in Washington *Daily National Intelligencer,* May 27, 1836.

[38] The tablet can be seen today as the church is still used for religious services.

the shoulders, always appeared to advantage in public. The dark eyes which first attracted attention, the bold forehead, the Grecian nose, the lineaments of his clean-shaven face, and the well-shaped head with its thin black hair scarcely touched with grey even at the close of his life, all bespoke the patrician, the scholar, the philosopher. The firm, square, but not too prominent chin indicated the determination that characterized the man throughout his career. Nature had endowed him with a strong constitution, and his faithful participation in outdoor activities, especially in daily, solitary walks, enabled him to maintain an unusual vigor during his long and eventful life.

Adversity did not embitter him, for he was sustained by an infinite patience, a happy philosophy, and a natural buoyancy of temperament. Prosperity could not spoil him. Love for society and conversational gifts of an uncommon order placed him at ease with people, regardless of their station in life. His social intimates were not confined to any political party, but were drawn from the best to be found in any group.

Devoid of affectation, austerity, and bigotry, philanthropy formed the basis of his nature. Although "a kinder or more amiable man never lived" than Livingston,[39] his dignified composure, force of will, courage, patriotism, and brilliant mind commanded for him universal respect. Alexis de Tocqueville in his work on American democracy described him as "one of those rare men whom one loves in reading what they have written, whom one admires and honors even before

[39] Extract of a letter from Taney to Jackson, September 4, 1840, in Bernard C. Steiner, *Life of Roger Brooke Taney* (Baltimore, 1922), 256.

knowing them, and to whom one is happy in owing a debt of gratitude." [40]

In the letters to his son Lewis,[41] Livingston revealed much of the philosophy of his life. His political precepts, drawn from his own experiences, were sound and practical. He warned Lewis to avoid "the noisy, intolerant zeal" over politics which disturbed "society with ceaseless disputes." He should refrain from "all feeling of party spirit" and overcome any desire to be the partisan of any man, but he should not be indifferent to the interest of his country. Only political measures "tending to ruin the country" should provoke him to "warmth of language" and never should he "accept any public employment that would directly or indirectly trench" upon his independence. "The pursuit of honest fame, the desire to serve your country," should be his guide.

Moral courage and patriotism should be ranked among the chief elements of Livingston's public character. Separated by a span of thirty years, Livingston enjoyed the unique distinction of exercising positive influence on the course of American political history during two important transitional periods. While a representative from New York, he distinguished himself by brilliancy in debate and vigor in attack. His militant leadership of the Jeffersonian party in Congress convinced Hamilton that his political destruction was necessary and the great Federalist actively campaigned against him in 1798 in a futile attempt to defeat him. Livingston not only influenced the expression of Jeffersonian republicanism but also gave direction to the

[40] Alexis de Tocqueville, *De la Democratie en America* (Paris, 1874), I, 22 n.

[41] Hunt, *Life of Edward Livingston,* 189–94, 213–43.

course of Jacksonian democracy. During both periods he was recognized as one of the strongest men of the time and was noted especially for his constitutional interpretations. He was as firm a republican as any of his Jeffersonian associates and was as strong a nationalist as Webster. The nullification document he prepared for Jackson was as virile and militant as the speech for the Union by the Massachusetts orator.[42]

Although possessing keen political judgment, Livingston lacked many of the attributes of the politician. He belonged to the period of family politics and party domination by the leaders and never acquired the art of appealing to the populace. He was rather cynical toward the masses and refused to play upon their emotions and prejudices. In the expression of his democratic opinions, there was no mixture of the demagogic view; consequently, he was never considered a "strong" candidate. Never a rabid partisan, his strength lay with the party leaders who appreciated the political value of his ability and of his intellectual honesty; and, naturally, his preferment came from them.

Livingston's success in making personal contacts was his strongest political forte. He had many friends among the opposition and few, if any who knew him personally, failed to respect him. The mutual admiration and regard that existed between men so unlike in nature, culture, and habit, as was the case with Jackson

[42] The Washington *United States Telegraph,* December 17, 1832, stated: "We yesterday expressed our admiration of it [Nullification Proclamation] as a paper of unusual eloquence. We also said it advanced high toned Federal doctrines. We might have added, the highest toned Federal doctrines—for in this respect it is certainly not surpassed by the Massachusetts argument for the Alien and Sedition laws, nor by Mr. Webster's speech on Foote's resolutions, nor by any other written or oral emanation from Federal authority, with which we are acquainted."

and Livingston, was indeed remarkable. Jackson, who was too shrewd to suffer long from imposition, probably was influenced more by Livingston on questions not purely political than by any other man during the period between the War of 1812 and the time of Livingston's departure for France. It was Livingston's lack of the ability to deal with men and to direct political intrigue, an ability possessed to so high a degree by Van Buren, that caused the President to yearn for the return of the "Little Magician." Nevertheless, it was Livingston whom Jackson most frequently commissioned to negotiate with individuals of the opposition when rare tact and discretion were required. It was Livingston whom he selected to draft his challenge to nullification and whom he sent on the delicate French mission to effect an amicable adjustment of the spoliation claims.

While he lacked the dramatic eloquence of Webster, the captivating leadership of Clay, and, possibly, the scholarly attainments of Calhoun, Livingston was more versatile than any of these statesmen. His writings and speeches, although logical and forceful, convincing and brilliant, contained but few quotable or climactic expressions, qualities of speech so typical of Webster's efforts. His devotion to the principles of Jefferson and Jackson denied him the opportunity for developing fully a leadership such as Clay came to enjoy, but his services to the national government in New Orleans during the War of 1812 showed him to possess this quality in no small measure. Even granted that Calhoun possessed a more powerful or analytical and logical mind than Livingston, the latter's intellect was sufficiently brilliant to refute successfully the South Carolinian's finespun logic of nullification. Not influenced by the

desire to become president, Livingston gave expression to his personal convictions more fully and clearly than did those political leaders who nursed such an ambition.

Livingston was a pioneer in the field of social reform. His plan to relieve the unemployment situation has definitely influenced present-day social legislation. Early in life he attained distinction in the field of law and during the Batture controversy he gained national reputation as an outstanding member of the profession. His services as an attorney were much in demand. During the last twenty years of his life, it was reported, his minimum retainer fee was $500.

Livingston's work in the field of codification, alone, justified Charles A. Beard's estimate of him as "one of the most remarkable figures in American history." [43] He was a leader of the codification movement of the 1820's in Louisiana and, during a five-year period, he drafted, or collaborated in the drafting of, seven codes and projects of codes for the state. Although legislative sanction of his work was restricted to the Civil Code, his plan of penal jurisprudence reform has served as a guide for enlightened legislators not only in the United States but also in South America and in Europe. Because of his dominant role in this field of endeavor, Professor Rufus C. Harris asserted, "Perhaps it might be said that no legal system in modern times has been more subjected to the direct impact of a single personality than that of Louisiana." [44]

Livingston's faults made him entirely human. He indulged moderately in games of chance and in alcoholic beverages, practices common in his day. His life, how-

[43] Charles A. Beard and Mary R. Beard, *The Rise of American Civilization* (New York, 1927), I, 561.

[44] Rufus C. Harris, "The Edward Livingston Centennial," in *Tulane Law Review*, XI (1937), 1.

ever, was entirely free from charges of dissipation or of irregular habits, accusations then so frequently made against men in public life. He was extravagant in his manner of living and maintained a standard often beyond his income. Livingston lacked judgment in business matters. He not only failed to manage his personal affairs judiciously, but, while in New York, neglected the details of his official business, which led to the financial difficulties with the national government resulting in the only serious blot on his reputation. While he merited the criticism he received for his conduct during the Jefferson-Burr contest in 1801, that conduct was no violation of the political ethics of the period.

Livingston received more praise than criticism from contemporary newspapers; and the capital press, irrespective of party alignment, was particularly kind to him. The editors of the *National Intelligencer* admired him greatly and frequently lauded his achievements and praised his character. Outside of Washington, and especially in New Orleans, the opposition press was not so considerate of him. Frequently these newspapers revived the old charge of public defaulter and were very bitter against him. On the whole, Livingston ignored the criticism and appeared to be unaffected by it.

Numerous European as well as American contemporaries were impressed with Livingston's versatility and ability. His reputation abroad rested largely upon his work in the field of penal reform. The French historian, François Auguste Marie Mignet, felt that in the death of Livingston "America has lost her most powerful intellect, the Academy one of its most illustrious members, and humanity one of her most zealous benefactors." [45]

[45] François Auguste Marie Mignet, *Éloge historique de M. Livingston* (Paris, 1838), 37.

The common council of New York declared that he had been "a leader in every enterprise calculated to improve or adorn society." The Society of St. Tammany commemorated his death and that of Madison in the same resolutions. Jackson bore "witness to the purity and devotion of his character," [46] and Charles J. Ingersoll placed him in "a peerage of which there are very few members." [47]

America presents few examples of men so versatile as Livingston. He attained eminence and distinction as a scholar, a philanthropist, and a statesman. He gained an enviable reputation as a diplomat and as a leader of social reform. He made contributions to the fields of politics and jurisprudence that entitle him to no small place in American history. The tribute of the Masonic Grand Lodge to the memory of its former Grand Master gave a contemporary estimate of Livingston's services and attainments when it recited that "In him were united exalted genius, profound acquirements, and untiring industry. . . . His mind was a store-house of varied, enlightened and useful knowledge, and his ready genius directed the proper time for energetic action. . . . In the science of jurisprudence his eagle eye saw the insufficiency, the misery and barbarity of principles handed down from darker ages, and his pen pointed to the remedy. . . . As a patriot his character stands forth conspicuous . . . as a civilian, he was profound and unrivalled—as a diplomatist, perspicuous and unyielding in his country's cause." [48]

[46] Jackson to Mrs. Livingston, May 26, 1836, in Bassett (ed.), *Correspondence of Andrew Jackson,* V, 399–400.

[47] Hunt, *Life of Edward Livingston,* 433.

[48] *Niles' Weekly Register,* L (1835–1836), 343–44.

No less a product of history than a maker of history, Edward Livingston's theories of jurisprudence, of social reform, and of the nature of the Union continue to this day to influence the course of American life.

CRITICAL ESSAY ON AUTHORITIES

Manuscript Collections

The search for the correspondence and private papers of Edward Livingston that are available to the public proved almost fruitless. Approximately three years ago the Johnston Livingston Redmond Papers were acquired by the New York Public Library; with the exception of one or two items relevant to this study, the collection pertains to the fortunes of the Livingston family prior to the advent of Edward as a character of importance. The available Edward Livingston letters are widely scattered both as to manuscript collections and geographic locations. Other than the half dozen listed in the Division of Manuscripts, Library of Congress, under "Personal Miscellany," a limited number are available in other collections of this depository; in The National Archives, Washington, D.C.; the New York Public Library; the records of the United States Circuit and District Courts of Louisiana, the Cabildo, the Bibliotheca Parsoniana, New Orleans; and the Department of Archives, Louisiana State University, Baton Rouge.

The collections of correspondence and papers containing Livingston letters and other information of value to this study in the Division of Manuscripts, Library of Congress, listed in the order of their importance to the present work, are the Papers of Andrew Jackson, Andrew Jackson Donelson (cited as Jackson Papers, 2nd Series), Martin Van Buren, Nicholas Biddle, Edmund Roberts, Nicholas P. Trist, Robert Morris, and Gideon and Francis Granger. Livingston's long and intimate connection with Jackson makes the Jackson Papers invaluable. Certain material not included in John S. Bassett (ed.), *Correspondence of Andrew Jackson,* justified the time spent on this collection. No citation has been given intentionally to the Jackson Papers for material

contained in the printed correspondence. The position of Martin Van Buren in the Jackson entourage made it inevitable that Livingston should be closely associated with the "Red Fox" in promoting the interests of their chief. No material pertinent to this study was found in the Biddle Papers that does not appear either in Reginald C. McGrane (ed.), *The Correspondence of Nicholas Biddle,* or in Ralph C. H. Catterall, *The Second Bank of the United States;* consequently no citation is made to the manuscript collection. While Livingston was Secretary of State, Edmund Roberts was given a roving commission to open trade relations with oriental countries and the correspondence between the two was official in nature. The Trist, Morris, and Gideon Granger correspondence was found to be of little importance.

Important source material bearing upon the discrepancy in Livingston's accounts with the Federal Treasury Department and the liquidation of this indebtedness in 1830 became available only recently when the Records of the Department of Justice, Office of the Agent of the Treasury and the Solicitor of the Treasury, were deposited in The National Archives. Permission was secured from the Department of Justice for use of this important correspondence and officially certified copies of court records pertaining to this case.

Livingston manuscript material in the New York Public Library is significant although limited in extent. In addition to the few letters in the Ford Collection, the collections of Stephen H. Olin, the Johnston Livingston Redmond Papers, and the George Bancroft Manuscripts and Transcripts were utilized to advantage.

Numerous letters, petitions, and reports to the Mayor and City Council of New Orleans, arranged in chronological order and bound into volumes, are available in the Cabildo, New Orleans. The bound volumes are listed as Record Books and are numbered, thereby expediting the work of the researcher. The Livingston material included in this collection is concerned almost exclusively with questions relating to the Batture Ste. Marie. Other communications, varying in nature, are also available, one of the more interesting being an 1809 letter to Aaron Burr.

Probably one of the best private collections of Americana in the entire country is to be found in the Bibliotheca Parsoniana, belonging to Mr. Edward Alexander Parsons of New Orleans. The unrivaled collection of Laffite Papers and a select number of John McDonogh Papers were particularly valuable. The successful efforts of Livingston, as attorney for the Laffite brothers, to enlist the Baratarians in the service of the United States during the War of 1812 are recorded in the Laffite Papers; his attention to the needs of his constituents as a Representative in Congress is revealed in the Livingston communications in the McDonogh Papers.

The limited "Livingston Miscellany" in the Department of Archives, Louisiana State University, is restricted to the Batture Ste. Marie controversy and to real estate activities, including acquisitions in the Bastrop Grant on the Ouachita River in North Louisiana.

The records of the United States Circuit and District Courts of Louisiana in the Federal Court Building and the Notarial Records in the Orleans Parish Civil Courthouse, New Orleans, Louisiana, reveal important details pertinent to the sale of certain Batture lots to the Federal government whereby Livingston liquidated his indebtedness with the Treasury Department and to his subsequent attempts to recover title to this property.

In the New Orleans City Hall Archives is the "Conseil de Ville," 1803–1829, the proceedings of the City Council of New Orleans for the period indicated. The original proceedings are still available, but the Works Progress Administration has done an excellent job of translating, arranging, and typing these records. They are an invaluable mine of information essential to any research in this field within the dates 1803–1829.

Printed Correspondence

The correspondence of most of the prominent and many of the minor statesmen of the late eighteenth and early nineteenth centuries is now available in printed form. Much of this material has been edited with scholarly discretion. This

work has reduced the time, labor, and expense attendant to research.

The first published writings of Alexander Hamilton were edited by his son, John C. Hamilton, *The Works of Alexander Hamilton; Comprising His Correspondence and His Political and Official Writings, Exclusive of the Federalist, Civil and Military,* 7 vols. (New York, 1850–1851). Although still of value it has been largely superseded by Henry C. Lodge (ed.), *The Works of Alexander Hamilton,* 12 vols. (New York, 1904). Footnote citations are restricted to the former edition as the Lodge work was not easily available during the period of final checking. Three editions of the works of Thomas Jefferson have been consulted as certain material is included in each that does not appear in the other two. Probably the best is Paul L. Ford (ed.), *The Works of Thomas Jefferson,* 12 vols. (New York, 1904–1905). An earlier edition, H. A. Washington (ed.), *The Writings of Thomas Jefferson,* 9 vols. (Washington, 1854), is still useful. The most pretentious is Andrew A. Lipscomb (ed.), *The Writings of Thomas Jefferson,* 20 vols. (Washington, 1903–1904). The only edition of the writings of John Adams is Charles F. Adams (ed.), *The Works of John Adams, Second President of the United States; with a Life of the Author, Notes, and Illustrations,* 10 vols. (Boston, 1850–1856). Many of John Jay's important letters are available in William Jay, *Life of John Jay, with Selections from His Correspondence and Miscellaneous Papers,* 2 vols. (New York, 1833); but more valuable is Henry P. Johnston (ed.), *The Correspondence and Public Papers of John Jay, 1794–1826,* 4 vols. (New York, 1890–1893). A fairly complete and accurate collection of Madison's letters is available in Gaillard Hunt (ed.), *The Writings of James Madison, Comprising His Public Papers and Private Correspondence,* 9 vols. (New York, 1900–1910). An earlier compilation, *Letters and Other Writings of James Madison,* 4 vols. (Cong. ed., Philadelphia, 1865), contains certain letters not included in the Hunt edition. For the writings of his successor in the presidency, Stanislaus M. Hamilton (ed.), *The Writings of James Monroe, Including a Collection of His Public Papers and Correspondence,*

7 vols. (New York, 1898–1903), leaves much to be desired in the way of thoroughness and adequacy. Of importance, especially in relation to diplomacy and finance and to the characters of the public men of his day, is Henry Adams (ed.), *The Writings of Albert Gallatin,* 3 vols. (Philadelphia, 1879). Pertinent to the period is Jared Sparks, *The Life of Gouverneur Morris With Special Selections From His Correspondence and Miscellaneous Papers,* 3 vols. (Boston, 1832). Particularly illuminating for the Jefferson-Burr House contest of 1801 are the Rufus King letters found in Charles R. King (ed.), *The Life and Correspondence of Rufus King: Comprising His Letters, Private and Official, His Public Documents and His Speeches,* 6 vols. (New York, 1894–1900). Much of the secondary comment is not of particular value.

Among the statesmen of the Jacksonian period, the most dynamic of the group was Jackson himself. Fortunately, the valuable and voluminous correspondence of this man has been ably reproduced by John S. Bassett (ed.), *Correspondence of Andrew Jackson,* 7 vols. (Washington, 1926–1935). This work contains the major portion of the important correspondence, yet certain significant materials have not been included. As Jackson and Livingston were close personal and political friends, extensive use of the publication has been made. Richard Crallé (ed.), *The Works of John C. Calhoun,* 6 vols. (New York, 1851–1856), is composed largely of selections from Calhoun's numerous speeches in Congress, changed somewhat from their form in the *Annals of Congress.* The American Historical Association, *Annual Report,* 1899, Vol. II (Washington, 1900), comprises J. Franklin Jameson (ed.), *Correspondence of John C. Calhoun.* Calvin Colton (ed.), *The Life, Correspondence, and Speeches of Henry Clay,* 6 vols. (New York, 1864), is far from complete but is valuable because of Clay's close connection with all great current movements and policies of the United States. Of the writings of Daniel Webster, Fletcher Webster (ed.), *The Private Correspondence of Daniel Webster,* 2 vols. (Boston, 1857), proved useful. A valuable source relative to the diplomacy of the Jackson Administration is John Bassett Moore (ed.), *The Works of James Buchanan, Comprising*

his Speeches, State Papers, and Private Correspondence, 12 vols. (Philadelphia, 1908–1911). A work of interest in connection with the diplomatic relations of the United States and Latin America is William Ray Manning (ed.), *Diplomatic Correspondence of the United States. Inter-American Affairs, 1831–1860,* 3 vols. (Washington, 1932). A phase of the political ramifications of the Jefferson-Livingston Batture controversy is revealed in Lyon G. Tyler (ed.), *The Letters and Times of the Tylers,* 3 vols. (Richmond, 1884–1885, 1896). Also of importance are the Livingston letters in James A. Padgett (ed.), "Letters of Edward Livingston to Presidents of the United States," in the *Louisiana Historical Quarterly,* XIX (1936). Other printed correspondence that has a direct bearing upon Livingston are "Two Letters of Chancellor Kent," in *American Law Review,* XII (1878); and John Bowring (ed.), *Works of Jeremy Bentham,* 11 vols. (London, 1843). Even a cursory investigation of affairs connected with the Second Bank of the United States necessitates a careful use of the illuminating material found in Reginald C. McGrane (ed.), *The Correspondence of Nicholas Biddle dealing with National Affairs, 1807–1844* (New York, 1919); and Ralph C. H. Catterall, *The Second Bank of the United States* (Chicago, 1903). An invaluable source to the student of the political history of New Orleans and Louisiana during the first two decades of the nineteenth century is Dunbar Rowland (ed.), *Official Letter Books of W. C. C. Claiborne, 1801–1816,* 6 vols. (Jackson, Miss., 1917). Although the work could be improved in annotation and arrangement, it is essential to an understanding of the times and there is no other comparable source.

Government Documents

The great collection of materials known as *American State Papers. Documents, Legislative and Executive, of the Congress of the United States,* 38 vols. (Washington, 1832–1861), is important and indispensable. Selected and edited under the authority of Congress, the series is divided into ten classes, five of which have been consulted: *Foreign Relations, 1789–1829,* 6 vols. (1832–1857), of which Vols. I and

II are important for the Administrations of Washington and John Adams, and Vol. VI for the American spoliation claims prior to 1815 against certain European nations; *Finance, 1789–1828,* 5 vols. (1832–1859), a veritable mine of information on the subjects of finance, tariff, and the Bank; *Military Affairs, 1789–1838,* 7 vols. (1832–1861), Vol. I of which contains numerous official papers relating to the campaigns in the vicinity of Washington and New Orleans during the War of 1812; *Public Lands, 1789–1837,* 8 vols. (1832–1861), which includes in Vol. II much of the documentary evidence relative to the Batture Ste. Marie controversy; and *Miscellaneous, 1789–1823,* 2 vols. (1834), which gives a large mass of source material relating to the Burr conspiracy and the question of internal improvements.

The *Debates and Proceedings in the Congress of the United States, 1789–1824,* 42 vols. (Washington, 1834–1856), cited by its cover title, *Annals of Congress,* does not contain a verbatim official account of the speeches and proceedings for the period. In these years the debates in Congress were poorly reported, when reported at all. The materials in the *Annals* were collected, so far as possible, from newspapers and pamphlets; consequently, they cannot be considered absolutely accurate even though they are generally recognized as authentic and acceptable as far as they go. During the period 1824–1837, the debates are reported in the *Register of Debates in Congress,* 14 vols. (Washington, 1824–1837). The *Congressional Globe,* 1833–1873, 46 vols. (Washington, 1834–1873), records more fully the proceedings and debates during this forty-year span. The last two series overlap for a period of four years. All three series include in appendices the acts of Congress and other important documents.

During the earlier years no regular system was followed by the government regarding the publication of the acts of Congress. In addition to the published acts of each session of the respective Congress, two compilations of the acts were consulted: for the period prior to 1815, *Laws of the United States of America from the 4th of March, 1789 to the 4th of March, 1815,* 5 vols. (Washington, 1815); for the subsequent dates, *Statutes at Large,* 8 vols. including index (Washington, 1845–1846). Many of the acts referred to during the pe-

riods 1795–1801 and 1812–1836 are available in the appendices of the debates of Congress for the respective years. Supplementary to the above-named government publications and of great importance are the collections of documents printed for each house of each Congress. Those consulted are *United States House Documents,* 21 Cong.–24 Cong. (Washington, 1829–1837), and *United States Senate Executive Documents,* 21 Cong.–24 Cong. (Washington, 1829–1837). In addition, *Treasury Department Document, No. 2603. The Accounting System of the United States From 1789 to 1910* (Washington, 1911), and the *United States Senate Journal,* 22 Cong., 1 Sess. (Washington, 1833), were utilized.

The most convenient reference for the messages of the presidents and accompanying documents is James D. Richardson (ed.), *A Compilation of the Messages and Papers of the Presidents, 1789–1902,* 10 vols. (Washington, 1903). It is, nevertheless, an unscientific work, for the arrangement of the materials is bad and the indexing is poor. The best collection of Federal and state constitutions is Francis N. Thorpe (comp.), *The Federal and State Constitutions . . . ,* 7 vols. (Washington, 1909). A necessary aid to the study of early American diplomacy is supplied by David H. Miller (ed.), *Treaties and Other International Acts of the United States of America, 1776–1818,* 5 vols. (Washington, 1931–1934). George E. Warring, Jr., and George W. Cable, *Social Statistics of Cities, History and Present Conditions of New Orleans, Louisiana . . .* (Washington, 1881), one of the supplementary publications to the Tenth Census of the United States, contains an excellent brief history of New Orleans.

Livingston's interest in penal reform envisaged a national movement culminating in Federal legislation. To this end, he prepared and submitted to Congress the following: *System of Penal Law for the United States of America: consisting of a Code of Crimes and Punishments; a Code of Procedure in Criminal Cases; a Code of Prison Discipline; a Book of Definitions. Prepared and presented to the House of Representatives of the United States. Printed by order of the House of Representatives* (Washington, 1828).

State, Territorial, and City Documents

Although restricted in number, the state and territorial documents cited below are of prime importance. The significance of the Livingston family in the history of colonial New York makes the two publications edited by E. B. O'Callaghan particularly valuable. First, *The Documentary History of the State of New-York,* 3 vols. (Albany, 1849–1851), is a collection of miscellaneous documents, correspondence, and other materials relating to the colonial history of New York. Second, *Documents Relative to the Colonial History of the State of New York,* 10 vols. and index (Albany, 1856–1861), contain illuminating materials secured from the archives of England, France, and Holland. For the period of statehood, the following have been consulted: *Constitution of the State of New York, 1777* (Fishkill, 1777); *New York Convention, 17 June, 1788* (Fishkill, 1788); Hugh Hastings (comp.), *Military Minutes of the Council of Appointment of the State of New York,* 6 vols. (New York, 1901); *Minutes of the Common Council of the City of New York, 1784–1831,* 19 vols. (New York, 1917); *Civil List, for the State of New York* (Albany, 1886, 1887, 1888).

Documentary materials consulted for the Louisiana territorial period are: *Acts of the Legislative Council of the Territory of Orleans, 1804* (New Orleans, 1805); *Acts of the Legislature of the Territory of Orleans, 1805–1811* (New Orleans); François-Xavier Martin, *A General Digest of the Acts of the Legislatures of the Late Territory of Orleans and of the State of Louisiana, and the Ordinances of the Governor under the Territorial Government* (New Orleans, 1816); and *Journal de la Convention d'Orleans de 1811–12* (Imprime par Jerome Bayon, pour l'usage de la Convention de 1844, New Orleans, 1844), reprint in the Louisiana State University Library. Of importance for the period following the admission of Louisiana as a state are: *Acts of the Legislature of the State of Louisiana,* 1814–1830, 1850 (New Orleans); Louisiana *House Journal,* 1812–1830 (New Orleans); Louisiana *Senate Journal,* 1812–1830 (New Orleans); François-Xavier Martin, *Louisiana Term Reports of Cases Argued and Determined in the Supreme Court of the State of*

Louisiana, Old Series, 12 vols. (New Orleans, 1811–1823), cited in the text as Mart. (O.S.), and *ibid.,* New Series, 8 vols. (St Paul, 1913); Louis Moreau-Lislet and Henry Carleton (trans.), *The Laws of Las Siete Partidas, Which are Still in Force in the State of Louisiana,* 2 vols. (New Orleans, 1820). William H. Byrnes, Jr., John H. Tucker, Jr., and Gaston L. Porterie (eds.), *Louisiana Legal Archives,* 2 vols. (New Orleans, 1937), Vol. I, *A Republication of the Projet of the Civil Code of Louisiana of 1825;* Vol. II, *A Republication of the Projet of the Code of Practice of Louisiana of 1825;* and Edward F. White and William Kernan Dart (eds.), *Louisiana Digest Annotated,* 8 vols. (Indianapolis, 1917), were valuable for a study of the codification movement in Louisiana.

Periodicals and Newspapers

Periodicals and newspapers constitute indispensable sources. The contemporary magazine in the modern sense was unknown and those magazines published contained much material reprinted from European journals. More important than the magazines were the newspapers of the period; but they, too, excluded local news almost entirely, allotting most of the space to foreign news, congressional debates, public documents, news items from other sections of the country, and advertisements. Most of the newspapers of the late eighteenth and early nineteenth centuries were established as political organs. They were in constant financial difficulties and the life span of many of them was almost as short as their lists of subscribers. Their fortunes were dependent upon the largess of political patrons or the continued political success of their party or faction at the polls. Politics was a serious business, and a majority of the partisan publications spared neither the public nor the private lives of their political adversaries. By the time of the Jackson era vituperation was a general weapon of offense, and a favorite "indoor sport" was the destroying of public men by attacking their private lives. It was about this time that effective use was made of political cartoons, which were often as reprehensible as many of the articles appearing in the same

publications. Consequently, the use of material except that of a factual nature necessitates a careful consideration of the political affiliation of the individual publisher and editor in arriving at valid conclusions.

First in importance among the periodicals published in the period is *Niles' Weekly Register,* 76 vols. (Baltimore, 1811–1849). In addition to European news it abounds in material, political, social, and economic. Although Hezekiah Niles was a strong high protectionist, opposed to Jackson, and sympathetic with the National Republicans and later with the Whigs, he gave a broadminded, judicious summary of the news and included in the columns of his paper clippings from contemporary journals. Considerable space is given to such important questions of the day as internal improvements, the tariff, the bank, the public lands, etc. Much material of an official nature is also included in the various issues, and next to the great collection of documents it stands in a class by itself. The editors of the *American Annual Register of Public Events,* 8 vols. (Boston and New York, 1825–1833), indicated their objective in the title given this publication. In this general medley an attempt was made to give at the close of each year a résumé of important happenings during the past twelve months in all fields of interest. Naturally, the essays and the articles were written with a bias; however, it is of value as a mirror of current opinion on various topics. Some light is thrown upon domestic politics and diplomatic relations with South American countries as well as with European nations. The *American Law Journal* (Philadelphia, 1807–1817), contains information concerning the Jefferson-Livingston New Orleans Batture controversy. Special articles in various issues of the *North American Review* (Boston, 1815–), give an evaluation of Livingston's work in the field of penal reform. Among the periodicals published later but containing articles pertinent to the period are the *Edinburgh Review* (London, 1802–); the *United States Magazine and Democratic Review* (New York, 1837–1851); the *Magazine of American History* (New York, 1877–1893); the *Methodist Quarterly Review* (New York, 1841–1884); the *American Mercury* (New York, 1924–); the *Report of the Maine State Bar As-*

sociation (Augusta, 1892–); the *American Bar Association Journal* (Baltimore, 1915–); the *Report of the Louisiana Bar Association* (New Orleans, 1899–); the *Tulane Law Review* (New Orleans, 1929–); and the *Columbia Law Review* (New York, 1901–).

Utilization has been made of source materials found in historical periodicals and publications of historical societies. The *American Historical Review* (New York, 1895–), the American Historical Association, *Annual Reports* (Washington, 1889–), and the Mississippi Valley Historical Association, *Proceedings* (Cedar Rapids, 1907–1918), include many important articles, monographs, and documents. The Johns Hopkins University *Studies in Historical and Political Science* (Baltimore, 1883–), and the Columbia University *Studies in History, Economics, and Public Law* (New York, 1891–), contain essential monographic material. The better state and regional historical quarterlies consulted with profit are the *Louisiana Historical Quarterly* (New Orleans, 1917–), the *Journal of Southern History* (Baton Rouge, 1935–), the *Mississippi Valley Historical Review* (Cedar Rapids, 1914–), *New York History* (Cooperstown, 1917–), and the *Pennsylvania Magazine of History and Biography* (Philadelphia, 1877–).

For newspaper accounts of events prior to 1804, the New York press publications were consulted almost exclusively. Subsequently, the newspapers of New Orleans, Washington, Philadelphia, and Richmond are of first importance. In the Jackson era, the New York journals again assume a position of some importance. In each instance the date span of the files of each paper consulted follows the title of the publication. In a few cases files are incomplete.

A roster of the New York Federalist press is herewith listed: *Daily Advertiser* (1792–1795, 1798–1804); *Spectator* (1797–1799, 1802–1803); *Gazette and General Advertiser* (1792–1838); *Herald* (1794–1804); *Minerva,* later the *American Minerva and New York Advertiser* (1794–1800); and the *Evening Post* (1801–1803), later a Jacksonian organ under the editorship of William Cullen Bryant. A publication with Federalist leaning that was less partisan in its position than the other journals is the *Weekly Museum* (1794–1803),

the contents of which are a reflection of its title. The opposition newspapers which in time came to be known as the Republican press, though fewer in number, were as virile and virulent as those of the Federalist party. Among the outstanding journals of this group are *Greenleaf's New York Journal and Patriotic Register* (cited as New York *Journal and Patriotic Register)* (1791–1798); *Morning Chronicle* (1802–1804); *Argus, or Greenleaf's New Daily Advertiser* (1795–1798); *American Citizen and General Advertiser* (1800–1809); *Time-Piece* (1797–1798). In Philadelphia the *Aurora* (1789–1810) was the most rabid of all the papers opposed to the Federalists.

The editorial policy of the New Orleans press concerning political matters was comparable to the accepted practices in New York. A further similarity of the two fields of journalism may be noted in the short life span of many of the publications. With the influx of Americans to New Orleans and to Louisiana came the establishment of English newspapers. Most of these publications found it necessary to make concessions to the Latin population by including in their journals pages printed in the French language. With the exception of the *Moniteur de la Louisiane* (1806–1814), the French press adopted the same practice in regard to the English language. The first New Orleans newspaper published entirely in the English language was the *Louisiana Gazette* (1804–1810). It was the organ of the new population that came from the North and East, just as the *Moniteur* voiced the sentiment of the Latin element. In 1810 the *Louisiana Gazette* became the *Louisiana Gazette and New Orleans Daily Advertiser* (1810–1815), and in 1815 ff. the title read *Louisiana Gazette and New Orleans Mercantile Advertiser* (1815–1818). In 1818 the *New Orleans Mercantile Advertiser* was dropped from the title and until 1828 it again appeared as the *Louisiana Gazette* (1818–1828). This paper gave considerable attention to American public men in New Orleans. It opposed Wilkinson and supported the Daniel Clark-Livingston faction in politics. The *Orleans Gazette* (1806–1812) was strong in its opposition to Wilkinson and Claiborne and friendly disposed toward Livingston.

During the first years that the *Louisiana Courier* (1807–1836) was published it supported the Claiborne faction and was particularly vehement in its opposition to Livingston. With a change of editors in 1815 there was a corresponding change of policy, and after 1820 the *Courier* was an active Livingston partisan. Although the *Argus* (1824–1828) frequently came into conflict with the French element of the city, it was an ardent supporter of the Livingston-Jackson political faction, while the *Bee* (1827–1829) was the organ of the Adams party. Other publications which are of value are the *L'Ami de Lois* (1813–1814), the *Louisiana State Gazette* (1826), and the *City Journal* (1826). Outside of New Orleans, the St. Francisville *Asylum and Feliciana Advertiser* (1821–1823), which in 1823 became the *Asylum* (1823–1825), was a supporter of Clay in the 1824 election.

In Washington the *National Intelligencer* (1803–1810, 1820–1836), known as the *National Intelligencer and Washington Advertiser* until 1810, was established as a Jefferson organ in 1800. This conservative publication continued as the organ of administrations until the election of Jackson in 1828. It supported the National Republicans, and during Jackson's presidency it became a Whig paper but was less vituperative and biased in its opinions than the majority of its contemporaries. The *United States Telegraph* (1826–1836) was friendly to Calhoun and supported the Jackson-Calhoun ticket in 1828. Following the breach between Jackson and Calhoun it ceased to be the spokesman for the Administration. The *Globe* (1830–1836) was established to provide the Jackson forces with an official organ after Jackson's break with Calhoun. The Richmond *Enquirer* (1824–1833), official organ of the Richmond Junto, ably edited by Thomas Ritchie, voiced the old Virginia influence. It supported Crawford for president in 1824 and in 1828 it advocated the election of Jackson. In addition to the *Evening Post* (1826–1836), the *Morning Courier* (1827–1829), which in 1829 became the *Courier and Enquirer* (1829–1836), the *Mercantile Advertiser* (1792–1838), and the *Journal of Commerce* (1826–1836) were the New York newspapers consulted for the period 1826–1836.

Contemporary Pamphlets

Generally speaking, pamphleteers are propagandists representing a composite reaction of a particular group to a specific, current, controversial question. Only contemporary pamphlets, which deal with certain phases of public opinion relative to questions pertaining to Livingston, have been listed.

The following New York publications deal almost exclusively with political matters: *Impartial Statement of the Controversy Respecting the Decision of the Committee of Canvass in New York, 1792* (New York, 1792), copy in Yale College Library; Jedediah Peck, *The Political Wars of Otsego or the Downfall of Jacobinism and Despotism, Being a Collection of Pieces lately Published in the Otsego Herald . . .* (Otsego, 1796), copy in Rare Book Room, Library of Congress; Matthew Livingston Davis, *The Plot Discovered* (Poughkeepsie, 1807); Alexander Hamilton, *An Address to the Electors of the State of New York* (New York, 1801); Edward Livingston, *Judicial Opinions, Delivered in the Mayor's Court of the City of New York, in the year 1802* (New York, 1803); [William P. Van Ness], *An Examination of the Various Charges Exhibited Against Aaron Burr, Esq., Vice-President of the United States; and a Development of the Characters and Views of His Political Opponents, By Aristides* (New York, 1803), copy in Rare Book Room, Library of Congress.

Three interesting pamphlets dealing with the New Orleans situation in the early territorial period were consulted. Copies of the *Memorial Presented by the Inhabitants of Louisiana, to the Congress of the United States in Senate and House of Representatives Convened* (New Orleans, 1804), and *A Faithful Picture of the Political Situation of New Orleans at the Close of the Last and the Beginning of the Present Year, 1807* (reprint of New Orleans ed., Boston, 1808), are available in the Rare Book Room, Library of Congress. The third pamphlet of significance is Daniel Clark, *Proofs of the Corruption of General James Wilkinson and of his connexion with Aaron Burr* (Philadelphia, 1809).

An interesting phase of the Antimasonic fight is portrayed in John Quincy Adams, *Letters to Edward Livingston, Grand High Priest of the General Grand Royal Arch Chapter of the United States* (Connecticut Antimasonic Tract Association, 1834).

The pamphlet warfare that was waged over the Batture question reveals the interest aroused and the bitterness engendered by the controversy. From the numerous publications that appeared, a selection has been made that is representative of the various phases of public opinion concerning this issue. Copies of the following pamphlets may be found in *American State Papers, Public Lands,* II: Edward Livingston, *Address to the People of the United States, on the Measures pursued by the Executive with respect to the Batture at New Orleans* (New Orleans, 1808); Thomas Jefferson, *The Proceedings of the Government of the United States, in Maintaining the Public Right to the Beach of the Mississippi, adjacent to New Orleans, against intrusion of Edward Livingston* (New York, 1812); Peter S. Du Ponceau, *Opinion on the Case of the Alluvion Land or Batture near New Orleans* (Philadelphia, 1808); Pierre Derbigny, *Case laid before counsel for their opinion on the claim to the Batture, situated in front of Suburb St. Mary* (New Orleans, 1807). Among other pamphlets consulted are: Edward Livingston, *An Answer to Mr. Jefferson's Justification of his Conduct in the Case of the New Orleans Batture* (Philadelphia, 1813); Louis Moreau-Lislet, *Case laid before Counsel for their opinion on the claim to the Batture, situated in front of Suburb St. Mary* (New Orleans, 1807); J. B. S. Thierry, *Examination of the Claim of the United States, and of the pretensions of Edward Livingston, Esq., to the batture in front of the Suburb St. Mary* (New Orleans, 1808); and *Reply to Mr. Du Ponceau* (New Orleans, 1809). Copies of three important Julien Poydras pamphlets are now in the Howard Memorial Library, New Orleans: *A Defense of the Right of the Public to the Batture of New Orleans* (Washington, 1809); *Further Observations in Support of the Right of the Public to the Batture of New Orleans or Port of St. Mary* (Washington, 1809); and *Speech of Julien Poydras,*

Esq., the Delegate from the Territory of Orleans, in Support of the Right of the Public to the Batture in Front of Suburb St. Mary, Friday, February 2, 1810 (Washington, 1810).

As the leader of the codification movement in Louisiana during the second and third decades of the nineteenth century, Livingston was a prolific writer. Of the numerous articles and reports from his pen, the following treatments of penal and commercial codes were most practicable for this study: *Report Made to the General Assembly of the State of Louisiana, on the Plan of a Penal Code for the said State* (New Orleans, 1822); *System of Penal Laws, prepared for the State of Louisiana; comprising Codes of Offenses and Punishments, of Procedure, of Prison Discipline, and Evidence applicable to Civil and Criminal Cases, And a Book of Definitions of technical words used* (New Orleans, 1824); *Project of a New Penal Code for the State of Louisiana* (London, 1824); M. A. H. Taillander (ed.), *Rapport sur le projet d'un Code pénal fait l'Assemblée générale de l'état de la Louisiane, Par M. Édouard Livingston* (Paris, 1825); *Code of Procedure, for giving effect to the Penal Code of the State of Louisiana* (New Orleans, 1825); *Code of Reform and Prison Discipline being the third part of the system of Penal Law prepared for the State of Louisiana* (New Orleans, 1826); *Introductory Report to the Code of Procedure* (New Orleans, 1827); *Introductory Reports to the Code of Prison Discipline* (Philadelphia, 1827); *Code of Reform and Prison Discipline. With introduction by Salmon P. Chase* (New York, 1872); *Commercial Code for the State of Louisiana* (New Orleans, 1825). Following are the co-operative works on the Civil Code: Edward Livingston, Louis Moreau-Lislet, and Pierre Derbigny (comps.), *To the Honorable the Senate and House of Representatives of the State of Louisiana, in General Assembly convened. The Subscribers, Jurists, appointed for the Revision of the Civil Code, Respectfully report* (New Orleans, 1823); *Code of Practice for the State of Louisiana, System of Practice containing rules to be observed in the prosecution of Civil actions. The title is in conformity with the expressions used in the Resolution of the Legislature, of the 14th of March, 1822* (New Orleans, 1823); *Additions and Amendments to the Civil Code of the*

State of Louisiana, Proposed in Obedience to the Resolution of the Legislature, of the 14th of March, 1822, by the Jurists Commissioned for That Purpose (New Orleans, 1823); *Civil Code of the State of Louisiana* (New Orleans, 1825). For the historical background of the Louisiana Civil Code, Charles E. Fenner, *The Genesis and Descent of the System of Civil Law Prevailing in Louisiana* (New Orleans, 1887), is valuable.

Livingston's writings on criminal jurisprudence, first printed in various pamphlets, were compiled by authority of the National Prison Association of the United States and reprinted as *The Complete Works of Edward Livingston on Criminal Jurisprudence,* 2 vols. (New York, 1873), with an introduction by Salmon P. Chase.

Autobiographies, Memoirs, and Reminiscences

Reminiscent and autobiographic writing constitutes an important source which calls for judicious use by the researcher. Charles Francis Adams (ed.), *Memoirs of John Quincy Adams, comprising portions of his Diary from 1795 to 1848,* 12 vols. (Philadelphia, 1874–1877); and Thomas H. Benton, *Thirty Years' View: or, A History of the Working of the American Government for Thirty Years, from 1820 to 1850,* 2 vols. (New York, 1854), are of pre-eminent importance as histories of the time by active participants. Adams, although biased and somewhat cynical, gives an analytical, day by day discussion of the motives and characteristics of his contemporaries that is illuminating. Benton, as spokesman for the western viewpoint and as a leader of the Jackson forces in the Senate, reveals much of the personal relationship among the politicians that otherwise would be lacking. Although of value, Matthew L. Davis, *Memoirs of Aaron Burr,* 2 vols. (New York, 1855) should be used with caution. Samuel Tyler (ed.), *Memoir of Roger Brooke Taney, LL.D., Chief Justice of the Supreme Court of the United States* (Baltimore, 1876), gives some insight into the working of the Jackson cabinet and contains a few official Livingston letters. John C. Fitzpatrick (ed.), *The Autobiography of Martin Van Buren,* in American Historical

Association, *Annual Report,* 1918, II (Washington, 1920), must be used with discrimination; as should also Charles W. March, *Reminiscences of Congress* (New York, 1850), which in reality is a sketch of Daniel Webster's political activities. The correspondence contained in *Reminiscences of James A. Hamilton; or, Men and Events, at Home and Abroad During Three Quarters of a Century* (New York, 1869), is illuminating and particularly valuable for the Jackson period.

Of unusual significance to the study of Edward Livingston is Edwin Brockholst Livingston, *The Livingstons of Livingston Manor; being the history of that branch of the Scottish house of Callendar which settled in the English province of New York during the reign of Charles the Second . . .* (New York, 1910).

Excellent descriptions of the national capital during the Jackson era are Gaillard Hunt (ed.), *The First Forty Years of Washington Society Portrayed by the family letters of Mrs. Samuel Harrison Smith (Margaret Bayard) from the Collection of her Grandson, J. Henley Smith, by Margaret Bayard Smith* (New York, 1906); and Josiah Quincy, *Figures of the Past from Leaves of Old Journals* (Boston, 1883).

Concerning New Orleans, the following are of particular interest. A copy of the anonymous *Mémoires sur la Louisiane et la Nouvelle-Orléans, accompagnés d'une dissertation sur les avantages que le commerce de l'Empire doit tirer de la stipulation faite par l'article VII du traité de cession, du 30 avril 1803, Par M * * *** (Paris, 1804), is available in the Louisiana State University Library. Vincent Nolte, *Fifty Years in Both Hemispheres; or, Reminiscences of a Merchant's Life* (London, 1854), gives a picture of New Orleans in the early nineteenth century from the viewpoint of a vain, garrulous, cynically humorous, rich merchant with interests in various parts of America and Europe, who served under Jackson during the War of 1812. A. Lacarrière Latour, *Historical Memoir of the War in West Florida and Louisiana in 1814–15* (Philadelphia, 1816), is of primary importance for the period of the New Orleans campaign during the War of 1812 as Latour was Jackson's chief engineer. James Wilkinson, *Memoirs of My Own Times,* 3 vols. (Philadel-

phia, 1816), is a tedious, poorly arranged, elaborate work which must be used with caution.

Certain information relative to Livingston is available in Theodore Sedgwick, Jr., *A Memoir of the Life of William Livingston* (New York, 1833); Auguste Davezac, "Fragments of Unpublished Reminiscences of Edward Livingston," in *United States Magazine and Democratic Review,* VIII (1840), 366–84; and Louise Livingston Hunt, *Memoir of Mrs. Edward Livingston, with letters hitherto unpublished* (New York, 1886).

Biographies

It is a well-recognized fact that the objective, well-executed biography, which maintains a proper balance between the activities of the individual and contemporary events, constitutes a source of real value. Such a biography is the monumental work of Albert J. Beveridge, *The Life of John Marshall,* 4 vols. (New York, 1916–1919). Although unsympathetic to Jefferson and written from a conservative point of view, it ranks among the greatest of American biographies and is indispensable to a study of this period of history. A work of almost equal merit is Henry Adams, *The Life of Albert Gallatin* (Philadelphia, 1879). Both Marshall and Gallatin were contemporaries of Livingston and the two authors have made use of the materials of the times. William Jay, *The Life of John Jay, with Selections from His Correspondence and Miscellaneous Papers,* 2 vols. (New York, 1833), and George Pellew, *John Jay* (Boston, 1890), are helpful. An excellent picture of New York politics during the last two decades of the eighteenth century is to be found in the best biography of Jay, Frank Monaghan, *John Jay, Defender of Liberty* (New York, 1935). In addition to Jared Sparks, *The Life of Gouverneur Morris, With Special Selections From His Correspondence and Miscellaneous Papers* (listed under "Printed Correspondence"), is the interesting and appreciative biography, Theodore Roosevelt, *Gouverneur Morris* (Boston, 1888). The definitive biography of Aaron Burr is still to be written. A fascinating story of this enigmatical character is James Parton, *The Life and Times*

of Aaron Burr (New York, 1858). Holmes Alexander, *Aaron Burr, The Proud Pretender* (New York, 1937), is a more objective, yet friendly, treatment of Burr. Probably the best treatment is found in Nathan Schachner, *Aaron Burr* (New York, 1937).

Seemingly, the biographers of Hamilton and Jefferson are incapable of objectivity in the treatment of their subjects. Each has suffered at the hands of his own and the other's biographer. Opposition to Jefferson's political philosophy is clearly evident in the enthusiastic, readable, artistic work of Henry Cabot Lodge, *Alexander Hamilton* (Boston, 1898). An equally strong bias against Hamilton is revealed in William G. Sumner, *Alexander Hamilton* (New York, 1890). The short work of Henry J. Ford, *Alexander Hamilton* (New York, 1929); and John T. Morse, Jr., *Life of Alexander Hamilton,* 2 vols. (Boston, 1876), are probably the least partisan. Of all the biographies of Jefferson, the most useful is Henry S. Randall, *The Life of Thomas Jefferson,* 3 vols. (Philadelphia, 1858). Far from judicial in tone, this highly eulogistic characterization is important as it contains materials not found in other studies. John T. Morse, Jr., *Thomas Jefferson* (Boston, 1889), is generally correct and deals chiefly with Jefferson's political career. Probably the most impartial treatment is the short work of David S. Muzzey, *Thomas Jefferson* (New York, 1918). Gaillard Hunt, *The Life of James Madison* (New York, 1902), written from sources, is sound, thoroughly scholarly, and adequate. Abbot E. Smith, *James Madison: Builder, A New Estimate of a Memorable Career* (New York, 1937), is excellent. Of particular value is Charles H. Ambler, *Thomas Ritchie, A Study in Virginia Politics* (Richmond, 1913). No adequate treatment has been made of Monroe but the most satisfactory work is George Morgan, *The Life of James Monroe* (Boston, 1921).

Biographers have given attention to most of the colorful characters of the later period of this study. James Parton, *Life of Andrew Jackson,* 3 vols. (Boston, 1888), although lacking proportion and written in a somewhat cynical style, gives an elaborate, picturesque, though partisan account of Jackson's career. The best critical treatise of Jackson is John

S. Bassett, *The Life of Andrew Jackson,* 2 vols. (New York, 1911). Marquis James, *Andrew Jackson: The Border Captain* (Indianapolis, 1933), and *Andrew Jackson: Portrait of a President* (Indianapolis, 1937), reissued as *The Life of Andrew Jackson* (Indianapolis, 1938), are important for Jacksonian background but fail to treat thoroughly many incidents necessary to a thorough understanding of the man himself. The best life of the great Nullifier is Gaillard Hunt, *John C. Calhoun* (Philadelphia, 1908). A partisan but more detailed study is William M. Meigs, *Life of John Caldwell Calhoun,* 2 vols. (New York, 1917). For the Massachusetts statesman, the four biographies consulted are George Curtis, *Life of Daniel Webster,* 2 vols. (New York, 1870); Henry C. Lodge, *Daniel Webster* (Boston, 1883); John B. McMaster, *Daniel Webster* (New York, 1902); and Claude M. Fuess, *Daniel Webster,* 2 vols. (Boston, 1930). Carl Schurz, *Life of Henry Clay,* 2 vols. (Boston, 1887), was until recently the standard work on the Kentucky statesman, and it is still most helpful. Glyndon G. Van Deusen, *The Life of Henry Clay* (Boston, 1937), largely supersedes Schurz. An elaborate biography that treats at length the general history of the time (listed under "Printed Correspondence") is Calvin Colton, *The Life, Correspondence, and Speeches of Henry Clay.* Other treatises on the Kentucky statesman are George R. Poage, *Henry Clay and the Whig Party* (Chapel Hill, 1936); and Bernard Mayo, *Henry Clay, Spokesman of the New West* (Boston, 1937), which closes with the beginning of the War of 1812, the first of a contemplated three-volume work. While inadequate, John T. Morse, Jr., *John Quincy Adams* (Boston, 1898), is the best work available. Probably the fairest analysis of Jackson's successor in the presidency is Denis T. Lynch, *An Epoch and A Man, Martin Van Buren and His Times* (New York, 1929). Somewhat old, but still valuable, is Edward M. Shepard, *Martin Van Buren* (Boston, 1889). A more recent but less valuable account of the New York politician is Holmes Alexander, *The American Talleyrand, The Career and Contemporaries of Martin Van Buren, Eighth President* (New York, 1935). A fair treatment of Crawford is J. E. D. Shipp, *Giant Days; or The Life and Times of William H. Crawford* (Americus, Ga., 1909).

An illuminating account of the Jacksonian political activities is included in William E. Smith, *The Francis Preston Blair Family in Politics,* 2 vols. (New York, 1933). A story of the important spokesman of the West can be found in William M. Meigs, *The Life of Thomas Hart Benton* (Philadelphia, 1904), and Theodore Roosevelt, *Life of Thomas Hart Benton* (Boston, 1887). An excellent aid in the study of the growth of the national concept is Theodore D. Jervey, *Robert Y. Hayne and His Times* (New York, 1909). A study of the political events of this period would be incomplete without some understanding of the eccentric John Randolph of Roanoke. Henry Adams, *John Randolph* (Boston, 1898), is an admirable but unsympathetic evaluation. William C. Bruce, *John Randolph of Roanoke, 1773–1833,* 2 vols. (New York, 1922), contains considerable pertinent source material but the general treatment is poor. Of value for the information concerning the Jackson period is Bernard C. Steiner, *Life of Roger Brooke Taney, Chief Justice of the United States Supreme Court* (Baltimore, 1922). John P. Kennedy, *Memoirs of the Life of William Wirt, Attorney General of the United States,* 2 vols. (Philadelphia, 1849), possesses certain significance because of the Antimasonic movement in politics. The bias of the biographers of James Wilkinson renders their works almost valueless. Two of the more recent biographies consulted are Royal O. Shreve, *The Finished Scoundrel; General James Wilkinson, sometime commander-in-chief of the Army of the United States who made intrigue a trade and treason a profession* (Indianapolis, 1933); and James Wilkinson, *Wilkinson, Soldier and Pioneer* (New Orleans, 1935). Although old and somewhat eulogistic, Charles H. Hunt, *Life of Edward Livingston* (New York, 1864), possesses particular value since the author has included many Livingston letters and other private materials that have not been made available to others. The briefer sketch, Carleton Hunt, *Life and Services of Edward Livingston* (New Orleans, 1903), is a friendly evaluation of the contributions of Livingston.

Indispensable to the student is Allen Johnson and Dumas Malone (eds.), *Dictionary of American Biography,* 20 vols. and index (New York, 1928–1937).

Histories and Monographs

The necessary information concerning the economic, social, and political factors essential to a proper understanding of contemporary events can be secured from standard histories covering the period. Among the multiple volume editions of general histories, the most satisfactory is Edward Channing, *A History of the United States,* 6 vols. (New York, 1905–1925). Important for the portrayal of the life of the people is John B. McMaster, *A History of the People of the United States, from the Revolution to the Civil War,* 8 vols. (New York, 1883–1924). It is a valuable collection of facts and records, relating to the social and economic life of the people, which have been drawn largely from contemporary newspapers. James Schouler, *History of the United States of America Under the Constitution,* 7 vols. (New York, 1894–1913), is a fair, general narrative that stresses political events with the arrangement rather too chronological for clearness. A brief but dry account of events, which is partial to the Federalists, is Richard Hildreth, *The History of the United States of America from the adoption of the Federal Constitution to the End of the Sixteenth Congress, 1788–1821,* 3 vols. (New York, 1852). The clearest picture of the Jefferson and Madison administrations has been drawn by the standard authority, Henry Adams, *History of the United States* [during the administrations of Jefferson and Madison], 9 vols. (New York, 1889–1891). Suggestive of the title is Hermann Edward von Holst, *The Constitutional and Political History of the United States,* 8 vols. (Chicago, 1876–1892).

Certain noteworthy briefer histories are significant. Edward Stanwood, *A History of the Presidency* [from 1788 to 1916], 2 vols. (Boston, 1928), is a convenient, reliable source which contains certain necessary documents but lacks footnotes and references. The authority on American political history for the period extending through Jackson's Administration is William O. Lynch, *Fifty Years of Party Warfare, 1789–1837* (Indianapolis, 1931). Frederick J. Turner, *The United States, 1830–1850: The Nation and Its Sections* (New York, 1935), is a most valuable single volume on this period.

Still an important work is the excellent summary, John W. Burgess, *The Middle Period, 1817–1858* (New York, 1897).

The most authoritative source of the political history of New York is Jabez D. Hammond, *The History of Political Parties in the State of New York,* 2 vols. (Cooperstown, 1846). This excellent history by a contemporary has been drawn upon by later writers of the history of the state. De Alva Stanwood Alexander, *A Political History of the State of New York,* 3 vols. (New York, 1906), is well written, illuminating, and of great value. Other works of significance are: Dixon R. Fox, *The Decline of Aristocracy in the Politics of New York,* in Columbia University *Studies in History, Economics, and Public Law* (New York, 1919); *Kemble Papers,* 2 vols., New York Historical Society *Collections* (New York, 1883–1884); Catharina Van Rensselaer Bonney, *A Legacy of Historical Gleanings,* 2 vols. (Albany, 1875); Mary L. Booth, *History of the City of New York,* 2 vols. (New York, 1867); Margherita A. Hamm, *Famous Families of New York,* 2 vols. (New York, 1897); Walter Barrett, *The Old Merchants of New York,* 3 vols. (New York, 1870); John W. Francis, *Old New York or Reminiscences of the Past Sixty Years* (New York, 1866).

The definitive history of Louisiana has yet to be written. The story of Louisiana under the French regime has been admirably told in the two works of Marc de Villiers du Terrage, *Histoire de la fondation de la Nouvelle-Orléans, 1717–1772* (Paris, 1917), and *Les derniéres années de la Louisiane française* (Paris, 1903). James A. Robertson, *Louisiana Under the Rule of Spain, France, and the United States, 1785–1807, Social, Economic, and Political Conditions of the Territory represented in the Louisiana Purchase as portrayed in hitherto unpublished contemporary accounts by Dr. Paul Alliot and various Spanish, French, English, and American officials,* 2 vols. (Cleveland, 1911), is a satisfactory treatment for the period indicated. The best account of the American rule extending to and including the battle of New Orleans and the trial of General Jackson is François-Xavier Martin, *The History of Louisiana, from the Earliest Period* (New Orleans, 1882). Subsequent writers have drawn upon the work of this contemporaneous historian, and Charles Gay-

arré, *History of Louisiana,* 4 vols. (New Orleans, 1903), follows Martin closely even to the point of terminating the study at the same date. Alcée Fortier, *A History of Louisiana,* 4 vols. (New York, 1904), brings the history of the state to the turn of the nineteenth century. The more valuable part of this work is for the period covered by Martin, whose treatment is followed by Fortier. Of lesser importance is Henry E. Chambers, *A History of Louisiana,* 3 vols. (Chicago, 1925). An excellent picture of Old New Orleans may be gained from: Henry Rightor, *Standard History of New Orleans, Louisiana* (Chicago, 1900); John S. Kendall, *History of New Orleans,* 3 vols. (Chicago, 1922); Stanley C. Arthur, *Old New Orleans: A History of the Vieux Carré, its Ancient and Historical Buildings* (New Orleans, 1937); and Grace King, *New Orleans, the Place and the People* (New York, 1903). For an insight into the people of the period, the following were consulted with profit: George W. Cable, *The Creoles of Louisiana* (New York, 1910); Stanley C. Arthur and George C. H. de Kernion, *Old Families of Louisiana* (New Orleans, 1931); J. S. Whitaker, *Sketches of Life and Character in Louisiana, the Portraits Selected Principally from the Bench and Bar* (New Orleans, 1847); Henry S. Foote, *The Bench and Bar of the South and Southwest* (St. Louis, 1876); and Thomas M'Caleb, *The Louisiana Book; Selections from the Literature of the State* (New Orleans, 1894).

Numerous illuminating works on the Livingston period are available; many of these studies are penetrating treatments of specific questions; and most of them are covered in both scholarly and readable fashion. Space precludes the enumeration of all such materials consulted and only those which were of specific value are included. For the period prior to the Jacksonian era the following collection is listed: Charles A. Beard and Mary R. Beard, *The Rise of American Civilization,* 2 vols. (New York, 1927); C. E. Miner, *The Ratification of the Federal Constitution by the State of New York* (New York, 1920); Edgar E. Robinson, *The Evolution of American Political Parties, A Sketch of Party Development* (New York, 1924); James A. Woodburn, *Political Parties and Party Problems in the United States* (3rd ed.,

New York, 1924); Frank M. Anderson, "Enforcement of the Alien and Sedition Laws," in American Historical Association, *Annual Report,* 1912 (Washington, 1914); Austin W. Scott, *Fundamentals of Procedure in Actions at Law* (New York, 1922); Andrew C. McLaughlin, *A Constitutional History of the United States* (New York, 1935); Felix Frankfurter and James M. Landis, *The Business of the Supreme Court, A Study in the Federal Judicial System* (New York, 1928); Gustavus Myers, *History of the Supreme Court of the United States* (Chicago, 1912); Charles A. Beard, *Economic Origins of Jeffersonian Democracy* (New York, 1927); Claude G. Bowers, *Jefferson and Hamilton, The Struggle for Democracy in America* (New York, 1925), and *Jefferson in Power; The Death Struggle of the Federalists* (Boston, 1936); Alexis de Tocqueville, *De la Democratie en America,* 3 vols. (Paris, 1874); William O. Scroggs, "Rural Life in the Lower Mississippi Valley about 1803," in Mississippi Valley Historical Association, *Proceedings,* 1914–1915, VIII (1915), 272–77; Isaac J. Cox, *The West Florida Controversy, 1798–1813; A Study in American Diplomacy* (Baltimore, 1918); Walter F. McCaleb, *The Aaron Burr Conspiracy* (New York, 1903); Thomas R. Hay, "Charles Williamson and the Burr Conspiracy," in *Journal of Southern History,* II (1936), 175–210. Several volumes in Allen Johnson (ed.), *The Chronicles of America Series,* 50 vols. (New Haven, 1918–1921), treat the period under review: Carl Becker, *The Eve of the Revolution,* XI (1918); George M. Wrong, *Washington and His Comrades in Arms,* XII (1921); Max Farrand, *The Fathers of the Constitution,* XIII (1921); Henry J. Ford, *Washington and His Colleagues,* XIV (1918); Allen Johnson, *Jefferson and His Colleagues,* XV (1921); Edwin S. Corwin, *John Marshall and the Constitution,* XVI (1919). Of the volumes in A. B. Hart (ed.), *The American Nation: A History,* 28 vols. (New York, 1904–1918), the following have been of value: Andrew C. McLaughlin, *The Confederation and the Constitution, 1783–1789,* X (1905); John S. Bassett, *The Federalist System, 1789–1801,* XI (1906); Edward Channing, *The Jeffersonian System, 1801–1811,* XII (1906); Kendrick C. Babcock, *The Rise of American Nationality, 1811–1819,* XIII (1906).

Among studies emphasizing the Jacksonian era the following were utilized with profit: Thomas P. Abernethy, "Andrew Jackson and the Rise of Southwestern Democracy," in *American Historical Review,* XXXIII (1928), 64–77; Samuel R. Gammon, Jr., *The Presidential Campaign of 1832,* in Johns Hopkins University *Studies in Historical and Political Science,* XL, No. 1 (Baltimore, 1922), 11–180; C. H. Rammelkamp, "Campaign of 1824 in New York," American Historical Association, *Annual Report,* 1904, I (Washington, 1905), 175–202; Charles McCarthy, "The Antimasonic Party," *ibid.,* 1902, I (Washington, 1903), 367–559; Carl R. Fish, "Removals of Officials by the Presidents of the United States," *ibid.,* 1899, I (Washington, 1900), 67–86; Claude G. Bowers, *The Party Battles of the Jackson Period* (New York, 1928); Frederic Bancroft, *Calhoun and the South Carolina Nullification Movement* (Baltimore, 1928); David F. Houston, *A Critical Study of Nullification in South Carolina* (New York, 1896); Richard R. Stenberg, "Jackson's 'Rhea Letter' Hoax," in *Journal of Southern History,* II (1936), 480–96, and "The Jefferson Birthday Dinner, 1830," *ibid.,* IV (1938), 334–45. Pertinent volumes in co-operative works include: Frederick J. Turner, *The Rise of the New West, 1819–1829,* XIV (1906), and William MacDonald, *Jacksonian Democracy, 1829–1837,* XV (1906), in *The American Nation: A History;* Frederic A. Ogg, *The Reign of Andrew Jackson,* XX (1919), in *The Chronicles of America Series;* and Carl R. Fish, *The Rise of the Common Man, 1830–1850,* VI (1927), in Arthur M. Schlesinger and Dixon R. Fox (eds.), *A History of American Life,* 12 vols., 10 of which have been published (New York, 1927–).

Materials concerning Livingston's connection with foreign affairs are herewith cited: Samuel Flagg Bemis (ed.), *The American Secretaries of State and Their Diplomacy,* 10 vols. (New York, 1927–1929); Willis Johnson, *America's Foreign Relations,* 2 vols. (New York, 1921); John H. Latané, *A History of American Foreign Policy* (New York, 1927); Samuel F. Bemis, *A Diplomatic History of the United States* (New York, 1936); John W. Foster, *A Century of American Diplomacy; Being a Brief Review of the Foreign Relations of the United States, 1776–1876* (Boston, 1900); J. F. Sprague, *The*

Northeastern Boundary Controversy and the Aroostock War (Dover, Me., 1910); Henry S. Burrage, *Maine in the Northeastern Boundary Controversy* (Portland, 1919); Julius Goebel, *The Struggle for the Falkland Islands, A study in Legal and Diplomatic History* (New Haven, 1927); George L. Rives, *The United States and Mexico,* 3 vols. (New York, 1913); Nathaniel W. Stephenson, *Texas and The Mexican War,* XXIV (1921), in *Chronicles of America Series;* Eugene C. Barker, "President Jackson and the Texas Revolution," in *American Historical Review,* XII (1907), 788–809; Tyler Dennett, *Americans in Eastern Asia* (New York, 1922); Paul C. Perotta, O.P., *The Claims of the United States Against the Kingdom of Naples* (Washington, 1926).

The following works on economic development have been consulted: Ralph C. H. Catterall, *The Second Bank of the United States* (listed under "Printed Correspondence"); Edward Stanwood, *American Tariff Controversies in the Nineteenth Century* (Boston, 1903); Davis R. Dewey, *Financial History of the United States* (New York, 1928); Frank W. Taussig, *The Tariff History of the United States* (New York, 1923).

Several articles relating to Livingston have been consulted: A. Haywood, "Life of Edward Livingston," in *Edinburgh Review,* CXX (1864), 189–216; "Edward Livingston," in *Methodist Quarterly Review,* XLVI (1864), 396–419; Milledge L. Bonham, Jr., "Forgotten American Statesmen," in *American Mercury,* II (1924), 493–500; John R. Delafield, "Montgomery Place," in *New York History* (Cooperstown, 1917–), XX (1939), 445–62; William Miller, "First Fruits of Republican Organization," in *Pennsylvania Magazine of History and Biography* (Philadelphia, 1877–), XLIII (1939), 118–43; W. O. Hart, "Mrs. Louise Livingston, Wife of Edward Livingston," in *Louisiana Historical Quarterly,* V (1922), 352–56; Ira S. Flory, Jr., "Edward Livingston's Place in Louisiana Law," *ibid.,* XIX (1936), 328–89; James A. Padgett, "The Ancestry of Edward Livingston of Louisiana: The Livingston Family," *ibid.,* 900–37; Francis P. Burns, "The Graviers and the Faubourg Ste. Marie," *ibid.,* XXII (1939), 385–427; Georgia F. Taylor, "The Early History of the Episcopal Church in New Orleans, 1805–1840," *ibid.,*

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